Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem

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Beyond NETmundial:
The Roadmap for Institutional Improvements to the Global Internet Governance

was produced as a part of the Internet Policy Observatory, a program at the Center for Global Communication Studies, the Annenberg School for Communication at the University of Pennsylvania. It was edited and curated by William J. Drake and Monroe Price. They were assisted by Briar Smith, Laura Schwartz-Henderson, and Alex Esenler from the Center for Global Communication Studies. The report was produced as a follow up to the publication, Stakes Are High: Essays on Brazil and the Future of the Global Internet.

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Introduction

Monroe E. Price

This collection of essays was prepared as a follow up to the exuberant meetings in São Paolo—NETmundial—an event that sought to develop a roadmap for internet policy and an internet "bill of rights." Our goal, in this project, has been to assist and support the extraordinary community that has prepared the 2014 Internet Governance Forum (IGF) in Istanbul. This is the annual gathering in which civil society, governments, international governmental organizations, members of the private sphere and technical communities come together to discuss and debate internet policy developments and internet governance processes and structures.

At the 2014 IGF, at least two dramatic processes are taking place.

First, there are the significant debates over the actual content and substance of internet policy, tooth and nail questions of how restrictive or how unencumbered the internet should and must be. These include, as well, internet infrastructural issues. Pervasive, too, is the discourse over core internet values, issues of access, net neutrality, freedom of expression online, and others. Churning alongside these substantive debates is the highly consequential and encompassing discussion of how the institutions of internet policy formation should themselves be structured: Who are the participants, and how should weight be distributed among them? How and where are decisions made and how do conclusions from these debates gain the ability to move from idea to adoption? How do we work towards consensus, for example, if consensus is the standard?

The meetings in Istanbul are a significant moment in a massive experiment in shaping global institutions. The interplay of gatherings—in this case from NETmundial to IGF—is a complex, messy, disputed set of interactions with much at stake. Future flows of information, political arrangements, and economic opportunities are affected. It is because of these very consequences that the IG community constantly struggles to reinvent and reestablish ideals of participation.

The working out of this experiment in fashioning policy takes place in the vortex of many acronymic entities: complex historic intergovernmental organizations, internet-specific structures of opportunity, powerful invented quasi-private entities, multistakeholder venues, and sovereign states—to describe only part of the ecology. What occurs at Istanbul's IGF is both an effervescent celebration and an amalgam of enthusiasts on the verge of nervous breakdown. All of this is what makes internet governance processes so interesting, important and in constant need of input and review.

We have tried, in this collection of essays, to capture what might be called the spirit that fueled NETmundial and that now seeks to enrich the Internet Governance Forum. That spirit has components of enthusiasm, sustained attention, self-creation of roles, voluntariness, intensity of knowledge of what has come before, commitment, idealism, practicality and inventiveness. The tone of these pages is almost invariably one of hope and faith, not quite religious, but definitely imbued with elements of belief. The chapters capture the brave effort at NETmundial to develop new institutional approaches and the concerted endeavor to build on that energy in Istanbul through constructive ideas and new governing conceptions. Everyone will bring his or her own reading to these contributions. My reading suggests that these analyses, recommendations, and aspirations can be read as sharpening the internet policy debate through the examination of purpose, efficacy and legitimacy.

The issue of *purpose* is of hallmark importance. What do NETmundial and its aftermath suggest in redefining the task of the IGF? It would be enough for some—and probably deservedly so—if the IGF were perceived as the zone for semi-organized debate and discussion—not just a society for the exchange of views, but an effective public sphere. Or it could be perceived as an important, though not the exclusive, incubator of ideas (ideas about accountability, about representation, about the mechanisms by which the internet is governed). It could be seen as an instrument in achieving a particular kind of internet—one that maintains certain principles, upholds human rights and preserves openness. It could be the proxy site for jurisdictional and substantive battles fought equally in other fora. The essays in this collection are very much concerned with

how these questions of purpose are debated and resolved, a debate marked out in Tunis and developed at the NETmundial in São Paolo as the essays here attest.

Efficacy is defined in relation to purpose. Is the IGF constituted to perform the roles that are assigned to it? The IGF has become part of the fabric of internet governance. But should the warp and woof of that fabric be refashioned? It is a characteristic of the galaxy of internet entities, and the IGF itself—indeed one of its charms—that the question is continuously asked. The IGF can be seen as a lubricant, to use a word from the machine age, which allows various complex parts to interact without undue friction. Visible in many of the contributions to this book is this necessary occupation with efficacy, sometimes invoked as part of the desire to create a more defined purposes for the IGF, to push it towards making specific recommendations and to achieve more measurable results.

In a way, *legitimacy* is all. In the swirling rounds of acronyms and meetings, in the search for some new world order of participation and governance, it is legitimacy that is the Holy Grail. How does the NETmundial process point the way to new mechanisms for legitimacy, here a legitimacy that surmounts the exercise of traditional modes of authority? In the history of the internet, legitimacy issued from the ranks of the software engineers; it issued from the authority, in the great accounts of origin, of single heroes like John Postel. Legitimacy can arise from perceptions of consensus or agreed upon democratic procedures. Sovereigns have innovated to adjust their ancient practices to the new global realities, as have, to some extent, international organizations.

The contributions echo the Montevideo Statement in terms of the collective importance of restoring legitimacy. That document stressed the "concern over the undermining of the trust and confidence of internet users globally due to recent revelations of pervasive monitoring and surveillance" and "warned against Internet fragmentation at a national level." It also recognized the need "to address Internet Governance challenges (...) towards the evolution of global multistakeholder Internet cooperation" and for "accelerating the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, *including* all governments, participate on an equal footing."[1]

NETmundial took up this challenge and the Istanbul meeting continues the evolution. As the processes of discourse become more complex, models of civility will come under challenge. NETmundial was concerned very much with the symbols of participation—everything from badges to rooms used to eating arrangements were considered from this point of view. Istanbul, Tunis, plenipotentiaries, NETmundial—these are all scenes in the grand theater of creating or hoping to create legitimacy for the interaction of players and policies concerning the internet.

As Kofi Annan has said, "In managing, promoting and protecting [the internet's] presence in our lives, we need to be no less creative than those who invented it."[2] The contributors to this guide write with this charge in mind. All have worked to make the NETmundial and the IGF important efforts in the history of the internet and—consciously or not—in the history of thinking about institutions and society. In the months ahead, in a contested world, we anticipate additional policy tremors. Coalitions will recalibrate and assertions of new leadership will make their mark. As global geopolitics change, what might be called the "foreign policies of internet policy" will change as well. Furthermore, as several of the essays here make clear, and as NETmundial made manifest, the interconnection between global internet governance and issues of state sovereignty will become more salient.

This project is sponsored by the Internet Policy Observatory, a program at the Center for Global Communication Studies of the Annenberg School for Communication at the University of Pennsylvania. It could not have been possible without the energetic drive of William Drake, who was the principal architect, the organizer and the institutional historian who could bring so many pieces together. His leadership resulted in the participation of many defining figures in creating this collection in remarkably short order. At Annenberg, Briar Smith, Laura Schwartz-Henderson, Alex Esenler, and Octavia Bray furnished editorial leadership in bringing the task to completion.

1 "Montevideo Statement on the Future of Internet Cooperation." ICANN.org. Last accessed August 28, 2014. https://www.icann.org/news/announcement-2013-10-07-en

2 Ban Ki-moon. "Secretary General's remarks at the opening session of the Global Forum on Internet Governance." Last accessed August 28, 2014. http://www.un.org/sg/statements/?nid=837

OVERVIEWS

Overview of the Book

William J. Drake

On 23 – 24 April 2014, the NETmundial "Global Multistakeholder Meeting on the Future of Internet Governance" was held in São Paulo, Brazil. 1229 participants from 97 countries came together to debate a wide range of internet governance issues and adopt by rough consensus the *NETmundial Multistakeholder Statement.* In the aftermath of the meeting, there has been a great deal of debate on the internet and in various internet governance-related forums about who won and who lost by how much in the text that was adopted and in the process more generally. Opinions predictably vary, and there are research projects underway designed to sort out the meaning of it all for the future of internet governance and multistakeholder cooperation.

The purpose of this publication is much more limited. Quickly assembled in the summer of 2014 for release at the Internet Governance Forum (IGF) meeting in Istanbul on 2 - 5 September, it brings together a group of scholars and practitioners to consider selected provisions of just one part of the NETmundial outcome document: The Roadmap for the Future Evolution of the Internet Governance [sic] (hereafter the Roadmap). As the name implies, the Roadmap is said by the organizers and many proponents of the meeting to lay out the way forward with respect to the evolution and improvement of global internet governance institutions and processes. If so, how exactly shall the global community proceed with its implementation? What are the priorities and challenges involved? These are the questions this book seeks to explore, with an eye toward informing the relevant discussions at the IGF Istanbul and other upcoming meetings in the months and perhaps years ahead, including within Internet Corporation for Assigned Names and Numbers (ICANN) and the recently announced NETmundial Initiative that is initially to be facilitated by the World Economic Forum (WEF).

Despite its potential importance, the Roadmap is actually a rather slight text. It occupies just three and a half of the outcome document's eleven pages. Its provisions are divided into three sections: *I. Issues that deserve attention of all stakeholders in the future evolution of Internet governance* (eight paragraphs); *II. Issues dealing with institutional improvements* (six paragraphs); and, *III. Issues dealing with specific Internet Governance topics* (three paragraphs). The last of these comprises rather general statements about the importance of international cooperation to promote cybersecurity and prevent cybercrime; a hotly contested and controversial statement that mass and arbitrary surveillance undermines trust, and that the collection and processing of personal data by state and non-state actors should be conducted in accordance with international human rights law and be the subject of more dialogue; and an endorsement of capacity building and financing in order to ensure that diverse stakeholders can effectively participate in internet governance processes.

These are all crucially important topics about which much has and will be said going forward. However, in the design of this project we decided to leave them aside for others to explore more thoroughly. Instead, we concentrate on some more bounded institutional issues that generally did not receive sufficient attention in São Paulo and the online consultations prior, or that could be the subject of specific concrete actions over the course of the next year. Most of these issues are scheduled to be discussed at the IGF Istanbul meeting, and they are covered in the first two sections of the Roadmap.

In the course of organizing this project and discussing it with colleagues, I have been reminded often that in light of the book's release on the eve of the event, probably few people will be able to read through the fifteen chapters to follow amidst all the frenzied activity that will occur in Istanbul. That being the case, this overview provides a synopsis of the chapters' main foci and arguments. It is hoped that readers of this summary who find they are especially interested to know more about particular contributions will be able to delve into them and save the others for later. The chapters are grouped into six sections: *The NETmundial Meeting; Strengthening the Internet Governance Forum; Filling the Gaps; Improving ICANN; Broader Analytical Perspectives;* and *Moving Forward.*

The NETmundial Meeting

Section I. of the Roadmap includes the following provisions:

1. Internet governance decisions are sometimes taken without the meaningful participation of all stakeholders. It is important that multistakeholder decision-making and policy formulation are improved in order to ensure the full participation of all interested parties, recognizing the different roles played by different stakeholders in different issues.
3. Stakeholder representatives appointed to multistakeholder internet governance processes should be selected through open, democratic, and transparent processes. Different stakeholder groups should self-manage their processes based on inclusive, publicly known, well defined and accountable mechanisms.
5. There should be meaningful participation by all interested parties in Internet governance discussions and decision-making, with attention to geographic, stakeholder and gender balance in order to avoid asymmetries.
6. Enabling capacity building and empowerment through such measures such as remote participation and adequate funding, and access to meaningful and timely information are essential for promoting inclusive and effective Internet governance.
8. Internet governance discussions would benefit from improved communication and coordination between technical and non-technical communities, providing a better understanding about the policy implications in technical decisions and technical implications in policy decision-making.[1]

In *The NETmundial: An Innovative First Step on a Long Road,* Joana Varon Ferraz provides a stage-setting overview of the NETmundial meeting and shows how its organization and conduct embodied these provisions of the Roadmap. Having served as a civil society representative on the meeting's Logistics and Organizational Committee, she had not only a front row seat from which to analyse but also a direct hand in the operational mechanics of the meeting, which she notes drew 1229 participants from ninety seven countries to São Paulo.

Varon emphasizes the innovative set of structures used to engage and organize diverse stakeholders from around the world in the preparatory process. Drawing on its experiences with the multistakeholder Brazilian Internet Steering Committee (CGI.br) and the then pending Marco Civil law, the host country devised a series of task-specific committees and groups that were mostly populated through invitations to governments and bottom-up selection processes undertaken by the private sector, technical community and civil society. Online consultations were conducted and drew 180 contributions from forty six countries that served as basis for the draft outcome document. The section on principles received more than 60% of the comments with the roadmap coming in a distant second, results that foreshadowed the dichotomy in interest that was evidenced during the meeting itself. Moreover, within the roadmap section, it was the provisions on mass surveillance that elicited the most comments; with the exception of the IANA and enhanced cooperation language, attention to the institutional reform agenda paled in comparison.

But despite the highly inclusive structures, consultations, and conduct of the plenary sessions, the final text was revised in drafting committees where the power and organization of states and business trumped other perspectives and led to somewhat forced compromises on items like net neutrality, intellectual property, and surveillance that left other participants dispirited. Hence, the overall sense of accomplishment felt by many was tempered somewhat by closing complaints about process and substance from some civil society participants, as well as (for entirely different reasons) the governments Russia, India, and Cuba.

Strengthening the Internet Governance Forum

Section II of the Roadmap includes the following provisions:

3. There is a need for a strengthened Internet Governance Forum (IGF). Important recommendations to that end were made by the UN CSTD working group on IGF improvements. It is suggested that these recommendations will be implemented by the end of 2015.

1 The NETmundial Multistakeholder Statement, Sao Paulo, 24 April 2014, pp. 8 & 9, http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf.

Improvements should include inter-alia:

a. Improved outcomes: Improvements can be implemented including creative ways of providing outcomes/recommendations and the analysis of policy options;
b. Extending the IGF mandate beyond five-year terms;
c. Ensuring guaranteed stable and predictable funding for the IGF, including through a broadened donor base, is essential;
d. The IGF should adopt mechanisms to promote worldwide discussions between meetings through intersessional dialogues.

A strengthened IGF could better serve as a platform for discussing both long standing and emerging issues with a view to contributing to the identification of possible ways to address them.[2]

In *A Perspective from the Technical Community,* Markus Kummer argues that the NETmundial was a watershed moment and successful celebration of the multistakeholder model. He traces the evolution of "multistakeholder cooperation" during the WSIS, and argues that the WGIG proved a milestone for the UN by introducing the term "multistakeholder" in internet governance, thereby laying the foundation for an IGF where all stakeholders take part on an equal footing. Turning to the NETmundial, he suggests that the meeting both built on the ground that was laid by the IGF and now is revealing a path forward for the IGF. In parallel, Kummer also finds possible inspiration for the IGF in the IETF, where new ideas usually get tested first in a Bird of a Feather session. Such sessions can lead to focused working groups and ultimately to consensus on complex problems. This approach could be adapted and transferred to the IGF in order to produce non-binding policy outcomes, the evolution of which could be well documented.

Kummer suggests that the 2014 IGF in Istanbul could be the starting point for developing intersessional work on substantive issues, as many in civil society have long advocated. Whether by building on existing Dynamic Coalitions or creating new ones, work on different topics could be pursued online and complemented by physical meetings held alongside the IGF preparatory consultations and at the annual IGF. The trick would be to develop a process that allows for adoption of non-binding documents by rough consensus, as was successfully done at the NETmundial.

In *A Perspective from the Private Sector: Ensuring that Forum Follows Function,* Vint Cerf, Patrick Ryan, Max Senges, and Rick Whitt develop a three-step analysis. They begin with the role of the private sector in the internet's development as a way to underscore their view that the internet's governance is a shared responsibility of governments, civil society and the private sector. The authors highlight key aspects of the internet's architecture, applications, and technical governance. Against this background, they then outline some of the main incentives for private sector engagement at the IGF. These include businesses' abilities to: "engage at scale" by reaching multiple stakeholders in one place, saving time and travel costs; promote a transnational multistakeholder internet governance ecosystem by addressing potentially dangerous developments that could otherwise lead to fragmentation of the web and the deceleration of progress through bureaucratization; encourage cooperation and alliances between firms in an environment where competitive interests can be set aside in order to pursue broader shared policy goals; pursue policymaking tech-transfer and knowledge sharing by ensuring that challenges and proposed solutions are openly evaluated and optimized based on stakeholder feedback; and increase their understanding of the cultural expectations of the "next 5 billion" by engaging with dialogue with governments and stakeholders from developing countries.

The authors then consider options for improving the IGF. In their view, the IGF should strengthen its ability to perform three clearinghouse functions so as to secure its place as the key transnational platform for facilitating internet governance. These are to identify emergent internet governance challenges; frame them so that experts from all relevant institutions can cooperate in developing and implementing innovative solutions; and assure that the progress and discourse are archived and available for analysis. In order to achieve this, they recommend documenting the mandate of the Multistakeholder Advisory Group (MAG) in order to specify its roles, responsibilities and expectations. This could be undertaken as part of a Web of Affirmation of Commitments that sets out expectations of the MAG vis-a-vis other stakeholders in the IGF and within the governance community, generally. Another important step would be to promote a culture of learning so that the IGF can better acknowledge and learn from its mistakes and then course correct. A good example of this need concerns the way IGF host countries are selected and the way in which Host Country Agreements are executed; until late in the game, problems with the latter almost led to the cancelation of the 2013 meeting in Bali. Finally, they argue that there is a pressing need to implement transparency mechanisms, particularly

2 *ibid.,* pp. 9 & 10.

with respect to the ways in which the UN's central administration oversees the Secretariat and related organizational matters.

In *A Perspective from Civil Society,* Jeremy Malcolm begins by recalling the initial vision and expectations of civil society participants in the WSIS process regarding the then proposed IGF. At the time, the civil society Internet Governance Caucus (IGC) expressed strong support for the concept and felt that the forum should serve as a vehicle for the development of soft law instruments such as recommendations, guidelines, and declarations. The mandate later set forth in the Tunis Agenda for the Information Society held the promise of helping civil society to advocate for the global public interest. For example, the IGF's mandate to promote and assess, on an ongoing basis, the embodiment in internet governance processes of the WSIS procedural principles of being multilateral, transparent, democratic and inclusive provided a baseline from which to encourage good governance across the global ecosystem. But alas, Malcolm argues, the IGF has failed to take advantage of the possibilities built into its mandate. He ascribes this failure to a number of sources, in particular an over-large and historically stagnant MAG that has been dominated by stakeholders whose preferences differ from those of civil society; an undue level of deference to the views of governments; an organizational culture that resists innovation, "and is inclined to compromise and back down in the face of reservations about proposed changes that are expressed from any quarter." Even the recommendations advanced in 2012 by the UN's multistakeholder Working Group on Improvements to the Internet Governance Forum (WGIGF), such as to develop more tangible outputs, have failed to be enacted seriously. His bleak conclusion is that the IGF "has become well and truly ossified."

Malcolm asserts that the NETmundial meeting showed just how easily and quickly some of the reforms civil society has long advocated could now be implemented. Issue-specific intersessional working groups could operate continuously and provide online and offline users equivalent opportunities to participate. Soft law recommendations could be developed through a participatory rough consensus process. A Multistakeholder Internet Policy Council could be established to ensure buy-in from all stakeholders to such outcomes. The IGF could ensure that its own structures and processes fully embody the WSIS procedural principles, inter alia by allowing stakeholder groups to directly select their MAG representatives. Documentation could be strengthened, as could the online presence, including by accepting offers of support from the community. The IGF could actively facilitate the engagement of stakeholders, particularly those from developing countries, and provide a coordination mechanism to direct stakeholders to external processes or institutions that can deal with a given public policy issue. These and related steps would enable the IGF to live up to its mandate, as civil society participants have long advocated.

Filling the Gaps

Section I. of the Roadmap includes the following provisions:

2. Enhanced cooperation as referred to in the Tunis Agenda to address international public policy issues pertaining to the Internet must be implemented on a priority and consensual basis. Taking into consideration the efforts of the CSTD working group on enhanced cooperation, it is important that all stakeholders commit to advancing this discussion in a multistakeholder fashion.
4. There is a need to develop multistakeholder mechanisms at the national level owing to the fact that a good portion of Internet governance issues should be tackled at this level. National multistakeholder mechanisms should serve as a link between local discussions and regional and global instances. Therefore a fluent coordination and dialogue across those different dimensions is essential.

And Section II. includes the following provisions:

1. All of the organizations with responsibilities in the Internet governance ecosystem should develop and implement principles for transparency, accountability and inclusiveness. All such organizations should prepare periodic reports on their progress and status on these issues. Those reports should be made publicly available.
2. Consideration should be given to the possible need for mechanisms to consider emerging topics and issues that are not currently being adequately addressed by existing Internet governance arrangements.
4. There should be adequate communication and coordination among existing forums, task forces and organizations of the Internet governance ecosystem. Periodic reports, formal liaisons and timely feedbacks are examples of mechanisms that could be implemented to that end. It would be

> recommendable to analyze the option of creating Internet governance coordination tools to perform on-going monitoring, analysis, and information-sharing functions.[3]

In *Institutionalizing the Clearinghouse Function,* William J. Drake and Lea Kaspar build off the last sentence in paragraph four above to develop a proposal to enhance the gathering, assessment and distribution of governance-related information and facilitation of distributed governance networks. The underlying objectives of such an initiative would be to help empower developing country governments and other non-dominant actors to respond effectively to policy challenges, particularly with respect to "orphan issues;" and potentially, to enhance the spread and application of good governance principles, such as transparency, accountability, and inclusive participation. To these ends, they outline an ensemble of programmatic elements that could be addressed in a coordinated manner and which they refer to as the clearinghouse function. Drawing on the experiences of similar initiatives in the climate change arena, the authors suggest that performance of the function would involve deciding on the balance between human expertise and machine processes; defining the scope of the governance issues to be addressed; undertaking user needs assessments; information identification, gathering, and verification; balancing between centralized and distributed information management; analysing events and trends; dissemination; trust and buy-in; and relationship management.

Drake and Kaspar then consider five possible options for institutionalizing the function. These include a status quo+ approach of strengthening existing enablers in the ecosystem, and establishing a new mechanism in an intergovernmental organization, a new multistakeholder organization, the IGF, or a mixed model in which an independent multistakeholder body establishes working linkages with the IGF.

In *Global Mechanisms to Support National Multistakeholder Efforts,* Anriette Esterhuysen assesses the concept of multistakeholderism, and then considers mechanisms that can strengthen and sustain multistakeholder policymaking at the national level. She begins by arguing that the internet is an inherently multistakeholder global public resource, but that unequal power relations characterize its development, use, and governance. Moreover, as it is often not possible to clearly divide the "national" from the "global" issues, it makes no sense to argue that the former do not belong in global discussions. This artificial separation has made participation by developing country stakeholders very difficult; they are made to feel that internet policy issues that matter to them are not important enough to be discussed. If they do want to participate in global discussions, they are under pressure to show knowledge and interest in issues that are often quite remote to them. The simplistic division of people into stakeholder groups also causes problems, and is a direct result of the absence of systematic acknowledgement of the differences in power, capacities, and resources among various social groups. Against this backdrop, she maps out seven types of mechanisms to support democratic multistakeholder governance, as well as risks that should be considered in their operationalization. She discusses mechanisms for sharing information and innovation; for dialogue, networking and debate; to provide normative frameworks and guiding principles; for capacity building; for research, monitoring and evaluation; to ensure balanced inclusion of relevant stakeholder groups; and directed specifically at governments, linked to intergovernmental processes and institutions.

Esterhuysen then turns to the questions of who establishes these mechanisms, where should they be located, and their coordination. We should begin by documenting existing mechanisms, and establishing where the main gaps are. Any coordination function needs to be located in a space that is trusted by civil society, business, the technical community, and by both the 'new' governance institutions and formations, and the traditional 'intergovernmental' sector. It needs to be non-aligned, particularly in the sense of not being dependent on an institution or entity that is currently seen as playing a controlling role in internet governance, or one with designs on playing such a role. She concludes that the IGF could be the ideal home for coordination and clearinghouse functions. Accordingly, she expresses concern that the proposed NETmundial Initiative, while well intentioned, is seriously tainted by the lack of transparency and inclusion around its formation.

In *Feet on the Ground: Marco Civil as an Example of Multistakeholderism in Practice,* Ronaldo Lemos shows how Brazil successfully developed the "Marco Civil da Internet" legislation that was signed by Brazil's President Dilma Rousseff at the São Paulo meeting. He traces the evolution of the project through seven years of intense debate with numerous stakeholders. Of great significance was that the legislation was proposed by civil society rather than the government, and was the product of an open and collaborative effort. Contributions were solicited from a wide variety of stakeholders, all of whom were able to assess one another's contributions.

3 *ibid.,* pp. 8 – 10.

The law sets forth a comprehensive "bill of rights" for the internet. It protects rights such as net neutrality and privacy. Moreover, it takes a strong stance against mass surveillance practices, for example by banning the use of deep packet inspection at the physical layer of internet connections. The Marco Civil also protects freedom of expression, creating safe harbours for online intermediaries in Brazil, and internet platforms have to take down content only when served with a valid court order.

Lemos points out that the law embeds multistakeholderism as a principle for internet governance in Brazil, which will directly influence Brazilian positions on global internet governance in international forums. In addition, its influence is spreading regionally and beyond, as governments and stakeholders elsewhere consider its implications and applicability in their own contexts.

In *A Journey Can be More important than the Destination: Reflecting on the CSTD Working Group on Enhanced Cooperation,* Samantha Dickinson provides a first-hand recollection and assessment of the WGEC's trials, tribulations, and implications. The WGIGF had set a precedent for multistakeholder cooperation in UN Commission on Science, Technology and Development (CSTD) working groups, making it easier for the WGEC to follow suit. Even governments that had not always been associated with supporting openness and transparency did not object, so nongovernmental stakeholders would be on an equal footing with governments in devising any recommendations for further implementing enhanced cooperation. Moreover, when the group began to meet in May 2013, the members agreed to open meetings to observers, pending size limitations of the meeting room. In addition, observers had a short daily speaking slot in which they could make interventions on the group's work. All this allowed the WGEC to push the boundaries of its multistakeholder modalities, but it did not help the members reach consensus on a set of recommendations about enhanced cooperation.

Despite this failing, Dickinson believes the WGEC made two very significant contributions to internet governance going forward. First, its experience could encourage further use of more sophisticated and multistakeholder mechanisms within the UN system, with each stakeholder group directly choosing the people that represent it in similar processes. Rather than demanding that all internet governance discussions within the UN should immediately become fully open and bottom-up, it may be useful for stakeholders to encourage and adopt wider use of this representative model so that governments become more comfortable and confident over time in interacting with other stakeholder groups on equal footing. Second, the WGEC experience could encourage more evidence-based discussions on enhanced cooperation in the future. As volunteer observers, Dickinson and Lea Kaspar worked in the WGEC's "Correspondence Group" to organize and cull evidence from hundreds of pages of responses received to a questionnaire inviting examples of enhanced cooperation. The "mapping document" they were developing when the WGEC concluded its efforts in May 2014 not only lists existing examples but also details gaps in governance processes in order to set an evidence-based approach to the development of recommendations. This work is supposed to be carried forward by the CSTD Secretariat, and has the potential to move us beyond the decade-long political stalemate on enhanced cooperation.

Improving ICANN

Section II. includes the following provisions:

5. In the follow up to the recent and welcomed announcement of US Government with regard to its intent to transition the stewardship of IANA functions, the discussion about mechanisms for guaranteeing the transparency and accountability of those functions after the US Government role ends, has to take place through an open process with the participation of all stakeholders extending beyond the ICANN community.

   The IANA functions are currently performed under policies developed in processes hosted by several organizations and forums. Any adopted mechanism should protect the bottom up, open and participatory nature of those policy development processes and ensure the stability and resilience of the Internet. It is desirable to discuss the adequate relation between the policy and operational aspects.

   This transition should be conducted thoughtfully with a focus on maintaining the security and stability of the Internet, empowering the principle of equal participation among all stakeholder groups and striving towards a completed transition by September 2015.

6. It is expected that the process of globalization of ICANN speeds up leading to a truly international and global organization

> serving the public interest with clearly implementable and verifiable accountability and transparency mechanisms that satisfy requirements from both internal stakeholders and the global community. The active representation from all stakeholders in the ICANN structure from all regions is a key issue in the process of a successful globalization.

In *The IANA Transition in the Context of Global Internet Governance,* Emma Llansó and Matt Shears lay out the tangled tale that began with the US National Telecommunications and Information Administration's (NTIA) 14 March 2014 announcement that it was seeking to relinquish its responsibilities in the management of the Domain Name System (DNS) to the global multistakeholder community. NTIA asked ICANN to convene a process that would develop a transition proposal that would support and enhance the multistakeholder model; maintain the security, stability, and resiliency of the internet DNS; meet the needs and expectation of the global customers and partners of the IANA services; and maintain the openness of the internet. In addition, NTIA stated that it "will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution." Subsequently, Assistant Secretary of Commerce for Communications and Information Lawrence Strickling elaborated on the announcement and specified that there should be continued separation of policy development and operational activities, and that "the neutral and judgment free administration of the technical DNS and IANA functions" must be maintained. To put this in context, the authors trace the evolution of the relationship between the US government and the IANA functions; clarify the nature of the US government's procedural role in administering changes to the authoritative root zone file and serving as the steward of the DNS; examine the international political dimensions of the US role, and the controversies that have swirled around it since the WSIS process and in light of the revelations by Edward Snowden of US mass surveillance programs; and explain the challenges faced by NTIA with respect to US domestic politics, where certain business interests and Congressional Republicans have sought to slow down and even derail the transition process.

Against this background, Llansó and Shears then map out the main developments in the process that ICANN has launched to facilitate consensus building around a transition proposal. They recount that ICANN's convening process initially was marred by what were perceived to be an overly restrictive scoping of the issues that could be discussed, an overly prescriptive process for the development of a transition proposal, and a proposed consultation process that revolved around ICANN meetings alone. Significant and sustained pushback from the ICANN community led to a recalibration and multiple adjustments to the process, and a contested interrelationship between the transition and the pending launch of a parallel process to assess and enhance ICANN's overall accountability. The process of developing a transition proposal has been placed in the hands of a recently constructed IANA Transition Coordination Group that comprises representatives from the internet technical community organizations, the ICANN constituencies, and global business. The group will coordinate the inputs from the various communities in order to arrive at a transition proposal. The authors conclude by outlining a series of challenges that must be overcome in this process, such arriving at a global multistakeholder, community-driven proposal that can garner the required broad community support. In addition, the initiative must reach beyond the ICANN environment and actively solicit input from the broader global community, consistent with the NETmundial document and views that have been expressed in other international forums.

In *ICANN Globalization, Accountability, and Transparency,* Avri Doria considers in turn each of these three major objectives as they are being addressed in ICANN today. With regard to globalization, she notes a shift over the years from the language of "internationalization" due to fears that the ITU or some other UN body would make a serious play to move the control of ICANN and its functions into the intergovernmental realm. ICANN has been seeking to free itself from oversight by a single nation for over 13 years or does not want to replace this with oversight by a multiplicity of governments. Globalization or denationalization would mean shifting this role into the multistakeholder environment. In the meanwhile, under President and Chief Executive Officer Fadi Chehadé, ICANN has expanded and revised its organizational structure by opening hub offices in Singapore and Turkey and engagement offices in a number of countries. However, there are limits on the extent of possible globalization because generic Top Level Domain names (gTLD), are in effect regulated via Registry and Registrar contracts concluded under the laws of the United States, California, and other US states. She notes that ICANN has also sought to globalize in other ways, e.g. the languages used in its processes, the launching of multilingual or Internationalized Domain Names, and so on. Nevertheless, ICANN continues to struggle with promoting the engagement of developing countries, particularly as homes to contracted parties in the gTLD industry. As such, she recommends a new round of gTLD applications oriented toward the private sector and civil society organizations in the developing world.

With regard to accountability, Doria breaks the objective down into three major elements: oversight, transparency, and methods for redress. She outlines alternative types of oversight, e.g. hard (commanding) vs. soft (recommending) forms; internal vs. external sources; and proscriptive and a-priori vs. exception-based. ICANN's Affirmation of Commitments provides a well-developed type of internal, soft oversight, but it could be strengthened by incorporating the required reviews into ICANN's bylaws. Finally, with regard to transparency, she asserts that ICANN is in line with to a model according to which carefully vetted rationales for decisions are published, but the actual discussions and documents that went into the decision are not made available to the community. She also maintains that ICANN lacks a strong whistleblower program and sufficient means for parties seeking redress of decisions and non-decisions that cause material harm. She concludes by recounting some of the controversies currently swirling around ICANN's emerging accountability enhancement initiative.

Broader Analytical Perspectives

The next section of the book begins a shift away from the implementation of particular elements of the Roadmap to wider contextualizing views on the NETmundial and global internet governance generally. The first two contributions offer academic perspectives on a meta-issue that underlies many policy debates about the Internet, namely the contested interface between the territorial nation-state and the transterritorial internet.

In *Towards Information Interdependence,* James Losey defines what he calls a "third-way" approach that offers a middle ground between extraterritorial policy regimes and national sovereignty. He considers the nature of sovereignty and its implications for the erection of "cyberborders" in order to maintain cultural or regime stability. He describes how in addition to excluding foreign content, some states have taken or contemplated measures to strengthen their authority through controls over the location of stored data and internet traffic routing. The author then advances the competing notion of "information empire," i.e. policies and practices in which states seek extraterritorial applications of internet jurisdiction. Actions by the Canada courts, the European Court of Justice's "right to be forgotten" ruling, and US mass surveillance practices are cited as examples of this phenomenon. With this binary established, he suggests that the political science concept of complex interdependence---consisting of multiple channels connecting societies, a multitude of interstate issues with no particular hierarchy, and less reliance on military force---can provide a framework for pursuing stable information interdependence at the global level, particularly for emerging "swing states" in global internet policy debates.

Losey then illustrates his thesis, highlighting five issue-areas that have been addressed in global internet governance debates. Regarding critical internet resources, he takes note of proposals to separate the IANA policy and operational functions by creating an independent DNS authority and granting oversight to a consortium of TLD registries. On the problem of content regulation, he points to the proliferation of national censorship policies that are inconsistent with human rights and create trade barriers for digital economies. He argues that policies are needed that preclude barriers to content production and distribution, limit intermediary liability and support freedom of expression. With respect to cybersecurity, he suggests a distributed approach that is grounded in principles for society, considers international implications, limits the secrecy of intelligence agencies, respects core privacy rights, and works towards international norms. On the hot topics of mass surveillance and data retention, he points out that the global scope of US surveillance has generated concerns about the control of internet traffic, the localization of data, and the trustworthiness of services offered by US providers. Finally, he suggests that the evolution of global intellectual property protection offers a cautionary tale about the risks of interdependence, as US influence combines with select business interests rather than leading to interdependence as a framework for state relations. He concludes that the emerging shift to a multipolar world necessitates a third way that both minimizes the information empire and reduces incentives for countries that might otherwise use cyberborders to rally national interests.

In *Towards Information Sovereignty,* Shawn Powers approaches the contested relationship between the national and the global spheres from a different but related angle. He posits a continuum between absolute freedom of expression and total information control, and then considers examples in which states have discouraged access to a singular shared internet by developing malleable domestic networks that are more capable of facilitating a balance between the two poles. He begins his exploration by tracing the rise of debates about "information sovereignty" in the 1970s, mostly notably in the New World Information and Communication Order battle within the United Nations Education, Scientific, and Cultural Organization. Fueled by the emergence of direct satellite broadcasting and related trends, many Soviet Bloc and developing country governments expressed concern about the

dissemination of US cultural products and news. While the negotiations did not yield a meaningful international regulatory agreement, the issue resurfaced in the WSIS process and is of relevance in the internet age. States with concerns about their information sovereignty face countervailing pressures, e.g. from businesses, citizens and activists preferring open cyberborders. They therefore work to find solutions that reduce political risks while allowing them to reap the benefits of connectivity, e.g. by filtering, monitoring and structuring industry-government relations in order to maximize state preferences.

The author argues that both democratic and non-democratic governments are exploring ways to control access to the internet without losing legitimacy and power. He illustrates this by offering three brief case studies of states restricting access to networks, incentivizing domestically-oriented web browsing, and developing popular and robust de facto national intranet systems. Denmark is widely considered a bastion for freedom of expression but engages in surveillance, data retention and strict copyright enforcement which serves to stifle political speech. And the US is pursuing various means of controlling access to the internet under the auspices of security, maintaining the integrity of confidential information, and protecting intellectual property. Powers briefly traces both key antecedents and concurrent practices to the recently revealed mass surveillance exemplified by the PRISM program. He concludes that IGF participants need to consider such state practices more carefully, and that participation in multistakeholder forums such as NETmundial and the IGF may not necessarily benefit civil society groups unless they are able to win clear and actionable concessions from governments and the private sector.

Moving Forward

While the previous two chapters widened the project's focus latitudinally, the final three chapters do it longitudinally. They look to the future, and how the processes begun at the NETmundial meeting and the global ecosystem more generally may evolve.

In *Creating a Global Internet Public Policy Space: Is there a Way Forward?,* Marília Maciel begins as well from the tension between nation-states and the internet, and suggests that the technical terminology used to discuss internet governance can have the effect of de-politicizing an inherently political topic. Governments in the developing world have legitimate concerns about the geopolitics of power and interdependence, and the thus far failed debate on enhanced cooperation means that there is no organizational setting in which they can pursue many global public policy issues of particular relevance to them. Proposals to create a centralized space in the United Nations should be understood as attempts to place policy development under democratic control anchored in the view that states' representatives can legitimately voice the concerns of their peoples. Moreover, there are efforts to place all countries on an equal footing in policy development, mitigating the disproportionate influence that some states have on private actors, mostly due to their capacity to exert jurisdiction.

Dissatisfaction with the status quo helps to fuel demands to enhance the role of existing intergovernmental organizations, most notably the International Telecommunications Union (ITU). It also will continue to fuel the bargaining over the WSIS +10 agenda, and the author suggest the need for a full-scale review of progress made since the WSIS. In June 2015, an intergovernmental negotiation process will commence, leading to a new intergovernmental outcome document for adoption at a high-level meeting of the UN General Assembly in December 2015. Maciel argues that the most reasonable solution is to revisit the Tunis Agenda and discuss its implementation by making the necessary adjustments and compromises in order to update it to present challenges. While recent meetings indicate that major breakthroughs are unlikely, she argues that it could be useful to revisit some of the various proposals put forward regarding centralized and distributed institutional arrangements. She contrasts India's suggestion of a UN Committee for Internet-Related Policies with the Brazilian government's more broadly framed support for a single space or platform that would be respectful of the multistakeholder model and considers as well proposals advanced by civil society analysts for new multistakeholder policy spaces. In contrast, she expresses concerns about the recently announced NETmundial Initiative spearheaded by Fadi Chehadé and the WEF.

In *Moving from the NETmundial of Today to the "NETmundial +" of Tomorrow,* Nnenna Nwakanma contemplates the evolution of the ecosystem in the post-NETmundial environment. In considering ways to move forward, she draws lessons from the experience of the WSIS and its principles and notes that traditional multilateral processes are likely to produce disputed outputs. The NETmundial meeting was a response to the need for more leadership in the internet governance space, and we need more countries that can demonstrate the sort of leadership that Brazil displayed. The meeting's organizers were wise to stick to global principles and the Roadmap, rather than delving into a multitude of topics at the

same time. The NETmundial did recognize though that there are many key issues that remain in dire need of attention in appropriate forums, such as net neutrality, jurisdictional issues, disputes over stakeholder roles and responsibilities, the meaning and application of "equal footing", and the development of benchmarking systems and related indicators regarding the application of good governance principles. She suggests that any similar global meetings held in the future choose to focus on a limited number of issues and a clear plan for following up on them.

Nwakanma draws the interesting conclusion that perhaps the most important takeaway from São Paulo concerns remote participation. The interactive and transparent systems put in place contributed much to the meeting's success and impact on stakeholders around the world. This is an important element of emerging participatory paradigms for the conduct of internet governance. These systems could help to provide more opportunities for the global South to participate, although she also acknowledges that many other steps will be needed as well. She concludes that the "letter and spirit" of the NETmundial needs to be kept alive, and the legacy should be transformed from documents to actions, from intentions to policies, and from agreements to achievements.

Last but not least, in *NETmundial: Watershed in Internet Policy Making?,* Wolfgang Kleinwächter also takes stock of the meeting's outcome and implications. He begins with the proposition that since the adoption of the Tunis Agenda in 2005, the internet governance discussion has not really moved forward. Numerous meetings and endless committees produced a never-ending chain of reports, summaries and papers with nice reflections but very little move towards action. In support of this claim, he reviews a number of developments in the UN setting, including the WGIGF, the WGEC, and the WSIS + 10 process. Even the IGF is today more or less still the same as it was in 2006, with calls for more concrete outputs being repeated year after year with nobody proposing a workable approach for it to address practical problems without becoming a negotiation body. The IGF needs to be strengthened and have its mandate renewed, and we should develop a linked multistakeholder internet policymaking mechanism that is responsive to the changing shape of the internet environment and the needs of all actors.

Kleinwächter argues that internet governance cannot be a hierarchical system with a sole intergovernmental decision maker at the top of a pyramid. What we have is an internet governance ecosystem with various governance models for specific issues and where different governmental and non-governmental stakeholders work hand in hand in a decentralized and layered system of shared responsibilities. He likens it to a virtual rainforest, with an endless and growing diversity of networks, services, applications, regimes and other properties that co-exist and conflict. It is not a homogeneous, manageable entity, and there is no "silver bullet" or "one size fits all" solution. The specific form of each sub-system has to be designed according to the very particular needs and natures of each individual issue. The challenge then is to find flexible mechanisms for enhanced communication and coordination, designing a mechanism for formal and informal collaboration among the various players at the different layers. These processes must also allow for all stakeholders to be able to play their respective roles on equal footing without discrimination, promoting openness and transparency and providing democratic checks and balances as well as a recognized accountability system. Keeping it growing will require efforts by all stakeholders. In this respect, the NETmundial offered a third way between the purported polar opposites of multilateral and multistakeholder cooperation, one based on an equal footing model of deliberation. Of particular importance to Kleinwächter is the section on internet governance principles, which provides a common basis for moving forward. Like the Universal Declaration of Human Rights, the NETmundial statement is a legally non-binding document, and it sets key standards that will help to guide the future evolution of the global Internet governance ecosystem.

The NETmundial: An Innovative First Step on a Long Road

Joana Varon

On April 23rd and 24th, São Paulo hosted a historic event: the NETmundial, also called the "Global Multistakeholder Meeting on the Future of Internet Governance," was a diplomatic event with the goals to "pursue consensus about universally accepted governance principles and to improve their institutional framework."[1] Whether one concludes that such ambitious goals were reached or not through NETmundial, the meeting should serve as a subject for reflective assessments on the processes guiding the meeting's implementation as well as an examination of each issue in the outcome document and its eventual implementation. The historical status of NETmundial became undeniable at least as far as it represented an innovation in the processes governing internet policy.

In order to document the pioneering ways in which the NETmundial organizing committee incorporated public participation into such a diplomatic meeting, this chapter dissects how the meeting was organized and functioned in order to result in the final outcome document, which will be object of the several chapters ahead in this publication. What were the lessons learned in terms of building a more democratic and inclusive arena for debate? What kind of practices can be replicated? What aspects should be improved? This essay will explore these questions in an effort to analyze NETmundial's role in paving a new way for internet governance.

The Political Context

The meeting was announced to the world in the beginning of October 2013 by Brazilian president Dilma Rousseff, after a meeting she had with the CEO of ICANN, Fadi Chehadé. This meeting occurred as a result of two significant events: President Rousseff's speech from September 24 at the 68th session of the UN General Assembly and the release of the Montevideo Statement on the Future of Internet Cooperation,[2] crafted by several representatives from the technical community, including ICANN[3], IETF[4], W3C[5] and many Internet Registries. Both statements were made in the aftermath of the Snowden revelations and can be seen as different and probably convergent reactions to the allegations of widespread online surveillance conducted by the United States of America.

The Montevideo Statement stressed the "concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance" and "warned against Internet fragmentation at a national level." It has also recognized the need "to address Internet Governance challenges (...) towards the evolution of global multistakeholder Internet cooperation" and for "accelerating the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing."[6]

President Rousseff's speech served as strong criticism, mostly directed at the government of the United States, to which she "expressed disapproval and demanded explanations, apologies and guarantees that such procedures will never be repeated." Recalling national sovereignty, she affirmed that, "tampering [communications] in such a manner in the affairs of other countries is a breach of international law and an affront of the principles that must guide the relations among them, especially among friendly nations."[7]

1 Center for Information and Coordination Ponto BR, 2013. 'Announcement Of The Brazilian Internet Steering Committee About The Global Multistakeholder Meeting On Internet Governance'. http://www.nic.br/imprensa/releases/2013/rl-2013-62.htm.

2 ICANN, 2013. 'Montevideo Statement On The Future Of Internet Cooperation'. https://www.icann.org/news/announcement-2013-10-07-en.

3 Internet Corporation for Assigned Names and Numbers, https://www.icann.org/

4 Internet Engineering Task Force, http://www.ietf.org/

5 World Wide Web Consortium, http://www.w3.org/

6 ICANN, 2013. 'Montevideo Statement On The Future Of Internet Cooperation'. https://www.icann.org/news/announcement-2013-10-07-en.

7 H.E. Dilma Rousseff, "Brazil" (statement given at the opening

During the speech, Rousseff has also cautioned that ICTs can become "a new battleground between States," as "in the absence of the respect for sovereignty, there is no basis for the relationship among nations." Therefore, she stated that the problem affects the [whole] international community and it requires response," identifying the United Nations as the organization that, "must play a leading role in the effort to regulate the conduct of States with regard to these technologies."[8]

Searching for a solution, she stressed that Brazil was going to "present proposals for the establishment of a civilian multilateral framework for the governance and use of the Internet and to ensure the effective protection of data," but not only, she stressed the "need to create a multilateral mechanism for the worldwide network"[9] capable of ensuring the following principles:

1. "Freedom of expression, privacy of the individual and respect for human rights.
2. Open, multilateral and democratic governance, carried out with transparency by stimulating collective creativity and the participation of society, Governments and the private sector.
3. Universality that ensures the social and human development and the construction of inclusive and non-discriminatory societies.
4. Cultural diversity, without the imposition of beliefs, customs and values.
5. Neutrality of the network, guided only by technical and ethical criteria, rendering it inadmissible to restrict it for political, commercial, religious or any other purposes."[10]

Therefore, the idea of NETmundial emerged at the helm of this new era in which monitoring and surveillance practices were understood as an undeniable reality and with various stakeholder groups from around the world calling for international cooperation towards developing basic principles for the internet. It was clear to many in the internet governance community that these answers could not be found in the wide variety of internet governance meetings foreseen for the diplomatic agenda of 2014[11] of the UN or other foras.

As such, NETmundial was conceived as a single event outside of the logic and dynamic of the traditional UN system and organized with the intent to be open to all the stakeholder groups and pursue some consensus for principle-based improvement of the institutional ecosystem of internet governance.

The idea was met with a mix of skepticism, excitement and concerns from different stakeholder groups. However, Brazil had two significant innovative experiences that provided many in the international community with the hope, and perhaps even trust, that NETmundial could truly serve as an innovative arena for collaborative decision-making and principle-setting:

a) The multistakeholder experience of the Brazilian Internet Steering Committee (CGI.br), which is composed of representatives from the government, corporate sector, civil society and scientific and technological community,[12] was established by presidential decree to propose policies and directives for use and development of the internet in the country, but also to recommend standards, promote studies and coordinate the allocation of IP addresses and the registration of ".br"

b) The process of drafting the Brazilian Civil Rights Based Framework for the Internet – Marco Civil: This lengthy legislative process sought to establish principles, guarantees, rights and obligations for the use of the internet in Brazil. Marco Civil was written through an open online public consultation process, where internet users were allowed to comment on the draft, paragraph by paragraph, directly on the website. Such an experiment, with its flaws and successes, became an achievement in itself and continues to be a point of reference in international discussions on using online tools to foster democratic participation. [13]

Organizing the Governance Structure

Inspired by the CGI.br model, the secretariat formed different committees all composed of representatives from the different stakeholder groups each with the following attributions:

The High-Level Multistakeholder Committee (HLC) was responsible for overseeing the overall strategy of the meeting and fostering the involvement of the

of the general debate of the 68th session of the United Nations General Assembly). http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf

8 Ibid.

9 Ibid.

10 Ibid.

11 "Internet Governance Processes: visualising the playing field" http://www.gp-digital.org/publication/internet-governance-processes-visualising-the-playing-field/

12 "About the CGI.br." http://cgi.br/pagina/about-the-cgi-br/148

13 Wikipedia contributors, "Brazilian Civil Rights Framework for the Internet," Wikipedia, The Free Encyclopedia, http://en.wikipedia.org/wiki/Brazilian_Civil_Rights_Framework_for_the_Internet

international community"[14] and was composed of:

- Twelve Ministerial-level governmental representatives (Argentina; Brazil; France; Ghana; Germany; India; Indonesia; South Africa; South Korea; Tunisia; Turkey and United States of America);
- Twelve non-governmental representatives from the different stakeholder groups (three from civil society, three from the private sector, three from academia and three from the technical community)
- Two representatives from International Organizations, appointed by the Secretary General of the United Nations (Hamadoun Touré, Secretary General from the International Telecommunication Union; Wu Hongbo, Under-Secretary General from the United Nations Department of Economic and Social Affairs and a representative from the European Commission).
- Chair: Brazilian Ministry of Communications, Paulo Bernardo

The Executive Multistakeholder Committee (EMC) was "responsible for the meeting agenda, the design of the meeting format and the invitation of attendees, all equally balanced across the global multistakeholder community"[15] and was composed of:

- Eight Brazilian representatives appointed by CGI.br (two from civil society, two from the private sector, two from government, from the Ministry of Communications and Ministry of Foreign Affairs; one from academia and one from the technical community)
- Eight non-governmental international representatives from the different stakeholder groups (two from civil society, two from the private sector, two from academia and two from the technical community)
- One representative from an International Organization, appointed by the Secretary General of the United Nations: again a representative from the United Nations Department of Economic and Social Affairs.
- Co-Chairs: Two representatives from the technical community, one from CGI.br and another from the international tech community, both were already also involved in the above groups.

The Logistics and Organizational Committee (LOC) was "responsible for guiding all logistical aspects of the meeting including: media outreach, international communications, website design and management, awareness raising, meeting venue, traveler funding strategy, security, and remote participation"[16] and was composed of:

- Two representatives from CGI.br
- One representative from ICANN
- One representative from Ministry of Justice
- One representative from the Ministry of Foreign Affairs
- One representative from the Cabinet of the Presidency
- One representative from 1Net
- Co-chairs: One representative from CGI.br and another from ICANN, both were already composing the groups above.

The Council of Governmental Advisors (CGA) was composed of all government representatives who participated and contributed to the meeting.

Finally, the meeting was chaired by the Secretary for IT Policy for the Brazilian Ministry of Science, Technology and Innovation, Professor Virgílio Fernandes Almeida, who is also a representative in the CGI.br. One representative from each stakeholder group (civil society, academy, technical community and private sector) were also appointed by professor Virgílio to co-chair the meeting with Professor Virgílio. Fadi Chehadé, CEO and President from ICANN served as the chosen representative from the technical community.

The processes of selecting non-governmental international representatives from the different stakeholder groups for the High-Level and the Executive committee was particularly a challenge. While the organizing committee of the event opted to use 1Net[17], a newly created forum, as a platform to channel names, each stakeholder group had a different set of processes for soliciting these nominations from within their own communities and networks. This nomination process is particularly difficult, considering the challenges of ensuring both legitimacy and representation, challenges that forced organizers to answer questions such as: What are the criteria for eligibility? What should the limits be for each constituency? Should people be selected by voting? If so, who would be able to vote? After elected, is there a proper accountability procedure? In face of this challenges, each stakeholder group came up with their own particular process to fulfill their respective seats in the multistakeholder committees.

14 "High Level Multistakeholder Committee," http://NETmundial.br/hlmc/
15 "Executive Multistakeholder Committee," http://NETmundial.br/emc/
16 "Logistics and Organizational Committee," http://NETmundial.br/loc/
17 1net, http://1net.org/

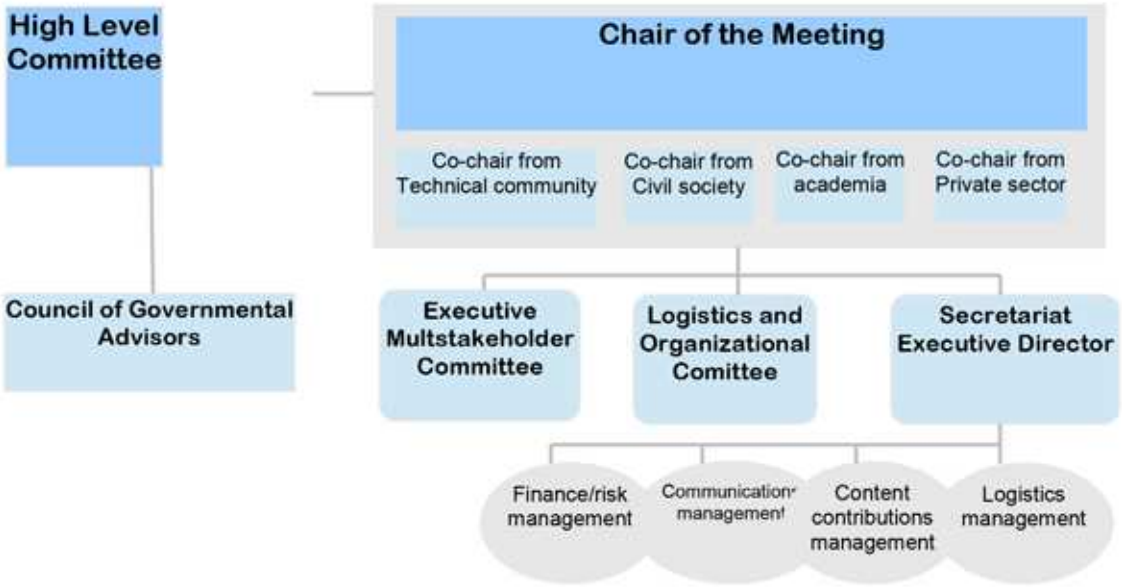

Figure 1: Hierarchy of NETmundial Committees

Source: NETmundial website: http://NETmundial.br/hlmc/

The Online Consultations

Inspired by the participatory experience of Brazil's Marco Civil legislation, in preparation for the event, the secretariat organized two phases of online consultations.

In the first phase, contributors from all stakeholder groups could submit ideas and references on the two main tracks of the meeting: principles and the roadmap. The organizers received 180 contributions[18] from 46 different countries, sent by representatives of civil society, the private sector, academy and the global technical community.

According to the organizers, civil society submitted 31% of the contributions for the first phase, while private companies were accountable for 23%, government institutions for 15%, academic community for 11% and the technical community for 8%.

In terms of contributions received by country in the first phase, the United States submitted 31 contributions, Brazil sent 16, the United Kingdom and India sent 7 each, Switzerland, France and Argentina sent 6 and Japan and Sudan, 4. Tunisia, Spain, Russia, Nigeria, New Zealand, Germany all sent 3 contributions each, Yemen, South Korea, South Africa, Senegal, Poland, Mexico, Kenya, Italy, Iran, China, Canada, Belgium and Australia sent 2 each, Zimbabwe, Uruguay, Ukraine, Trinidad and Tobago, Sweden, Portugal, Norway, Mauritius, Malta, Malaysia, Kuwait, Côte d'Ivoire, Denmark, Republic of Congo, Colombia, Bulgaria and Austria were accountable for 1 contribution each.

All of these contributions served as the basis for the elaboration of the NETmundial draft outcome document by the EMC.[19] Then the EMC forwarded this document to the HLC for initial draft approval. However, while this draft was circulating internally between the EMC and the HLC, the EMC's version was leaked by Wikileaks. A version very similar to this leaked draft was then published and submitted for comments in the second round of consultations.[20]

The commenting tool was customized based on "Commentpress,"[21] an open source wordpress plugin for social texts. To engage in the commenting, visitors did not have to create an account, but needed to provide a full name, email address and self-identify with one of the stakeholder groups. The goal was to enabled visitors to comment and see all the other comments submitted paragraph-per-paragraph. So, just as with the consultation process for Marco Civil, visitors were

18 Contributions can be viewed via this .zip file: http://content.NETmundial.br/contributions-pdf.zip

19 NETmundial. "NETmundial draft outcome document," last modified April 14, 2014. http://document.netmundial.br/net-content/uploads/2014/04/NETmundial-draft-outcome-document_April_14.pdf

20 NETmundial. "NETmundial Comments," http://document.NETmundial.br/

21 CommentPress. "Welcome to CommentPress," http://futureofthebook.org/commentpress/

able to engage in an online debate and critique on each and every paragraph, ultimately turning the document into an interactive conversation with a wide variety of stakeholders across the globe. This conversation could also be reported on and quantified. As a result, between April 15th and 21st, the document received 1370 comments according to Figure 3.

It is easy to note that the section on principles received more then 60% of the comments (832 comments) as compared with the section on the roadmap (498 comments). Commentors self-identified as civil society and private sector were the most active contributors in both phases of the preparation process.

A complete spreadsheet in open format with all the comments per paragraph, by name and stakeholder group is available for download in the references session of the NETmundial platform.[23]

In the section on principles, the most commented paragraph was #13 about an "enabling environment for innovation and creativity," where discussions were raised on whether to address or not address Intellectual Property Rights in the text. Additionally, many (83 individuals) commented on the title, stating that Human Rights principles are central for Internet Governance principles. Paragraph 15, about the Multistakeholder concept had 55 comments and paragraph 5, on Privacy, had 53 comments.[24]

23 NETmundial. "References," http://www.NETmundial.org/references/

24 NETmundial. "NETmundia Draft Outcome Document Public Consultation: final report on comments," last modified April 22, 2014, http://netmundial.br/wp-content/uploads/2014/04/NETmundialPublicConsultation-FinalReport20140421.pdf.

Figure 3: Comments Per Stakeholder

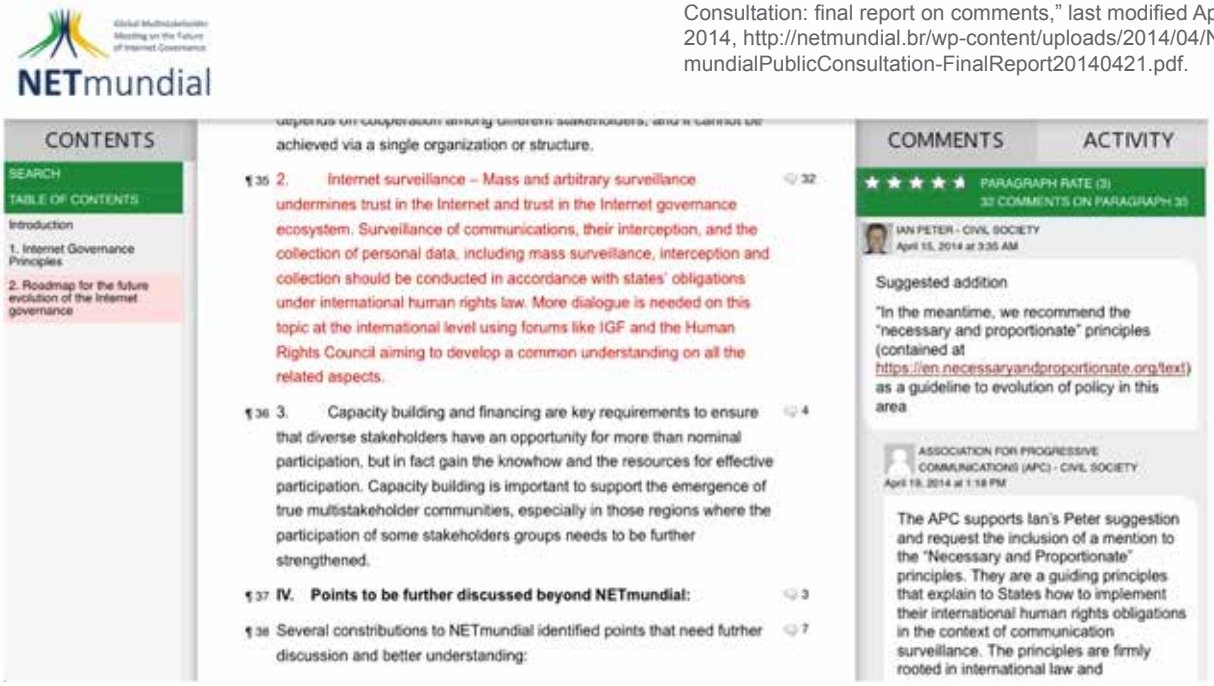

Figure 2: Commenting Platform for the Second Phase

Source: http://document.NETmundial.br/

	N/A	ACADEMIA	TECHNICAL COMMUNITY	GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY	TOTAL
Introduction	1	3	1	10	2	23	40
Principles	59	55	78	62	221	357	832
Roadmap	20	39	41	75	119	204	498
Total	80	97	120	147	**342**	**584**	1370

Group in the Second Phase[22]

22 NETmundial Draft Outcome Document Public Consultation: final report on comments with a note that all commentators sectors are self-declared; there was no validation system to verify the authenticity.

In the section on the roadmap, paragraph 35, on internet surveillance, had the most comments (32), followed by paragraph 32 (29 comments), addressing whether there is a need to "continue work pursuing international agreements on topics such as jurisdiction and law enforcement assistance to promote cybersecurity and prevent cybecrime," or if there should be other instruments more appropriate for addressing the topic, for some, involving multistakeholder participation.[25] Some comments also delt with issues regarding terminology, particularly attempting to address the differences between "cybercrime," "cyber attacks," "cyber espionage," "cyber warfare" and so on.

There were additional topics that provoked controversies amongst the commenters; paragraph 16, regarding whether "consideration should be given to the possible need for mechanisms to consider emerging topics and issues that are not currently being adequately addressed by existing Internet governance arrangements" (26 comments); paragraph 6, on roles and responsibilities of the stakeholders (26 comments); paragraph 2, on characteristics for the internet governance framework (24 comments); paragraph 8, on the selection of representatives per stakeholder group at multistakeholder Internet governance processes (19 comments); paragraph 27, on the IANA transition and, finally, paragraph 7, on Enhanced Cooperation (19 comments).[26]

The Plenary Sessions

Plenary session of NETmundial started with a remarkable moment for digital rights in Brazil: the sanction of Marco Civil by President Rousseff. After more then 4 years of debate, the text had just been approved a day before in the National Senate. This historical event fueled the themes of the president's an opening speech, where she reiterated the themes from her statement at the UNGA, and reaffirmed that surveillance activities and intrusive online acts "are not acceptable, were not acceptable in the past and remain unacceptable today, in that they are an affront against the very nature of the Internet as a democratic, free, and pluralistic platform." Finally, she called for a "change in the current state of affairs and for an ongoing consistent strengthening (…) efforts to ultimately protect basic human rights."

Participants

According to the organizers, the event had 1229 participants from 97 countries. From that number, 38.5% were government representatives, 18.1% were participants self-identified as civil society, 14.4% as private sector, 12.4% as technical community, 9.8% as academia and 6.8% from other.[27]

It is important to note that the organizers of the event held a period of "expression of interest" in which potential attendees were supposed to register on the platform. As such, the NETmundial Executive Secretariat was able to collect information regarding the expected meeting attendance and potentially foster more participation from certain stakeholder groups or regions in order to reach a better overall balance in representation. For that same reason, at least until the final arrangements, attendance of government representatives was limited to 2 representatives from each delegation, or 3, in the case of a nation bringing a representative at the Ministerial Level.

With 221 participants, of course, Brazil was the biggest delegation, followed by the USA, 110 participants, and both Argentina and France had 30 participants. Belgium, Germany, Russia, Switzerland and India were the next largest delegations, all between 15 and 21 participants. In terms of representation per region, 378 of the participants were from Latin America, 200 from Europe, 166 from North America, 133 from Africa, 128 from Asia and 33 from Oceania.[28]

In order to account for those unable to travel to Brazil, the Logistics and Organizational Committee issued a call for hubs to convene remote participatory, local meetings to simultaneously watch and intervene in the plenary of NETmundial. Proposals were analyzed by the LOC according to "geographical coverage, adequacy of infrastructure, personnel provision and necessary costs". In total there were 33 official hubs, spread over 30 cities in 23 countries, all with real time interaction with the event. The meeting was also broadcast online for those willing to watch. Those web channels were available in English, Spanish, French, Chinese, Russian, Arabic and Portuguese, while live scribing was available in English.

25 Ibid.
26 Ibid.
27 Presentation from Prof Virgilio Almeida at ICANN, London on June, 23, 2014.
28 Presentation from Prof Virgilio Almeida at ICANN, London on June, 23, 2014

Rules of Engagement

Unlike the usual diplomatic meeting, NETmundial had an innovative dynamic for interaction with the floor in the plenary sessions. Every participant, government representatives included, had to queue for the microphone according to their respective stakeholder group. There was one microphone per group: one for civil society, one for government, one for business and another for the academic and technical community. Interventions would rotate, one per stakeholder group for a maximum two minute intervention, timing that was then reduced to 1:30.

In addition to the interventions from participants in Brazil, the right to intervene would also rotate for a two minute interaction to one of the remote participation hubs that was capable of making real time video communications (bidirectional hubs) and for additional interventions from the unidirectional hubs, capable only of voice interaction. Individuals not participating through hubs were also able to make voice interventions, competing with the slot of unidirectional hubs. Therefore, one full round of interactions was composed of six slots, four for the microphones in São Paulo and two for remote participation.

After the opening ceremony and welcome remarks, the meeting agenda was divided into two kinds of working sessions: one on principles and another on the roadmap, which were respectively interspersed and structured according to the draft outcome document. This structure allowed for each of the two sessions to convene twice, once per day, and to receive inputs directed to a particular part of the draft outcome document.

Each working session started with a briefing of the Draft Outcome Document, which was under consultation in the plenary along with a short analysis of the comments that were received on the online platform. Unfortunately, due to time constraints, organizers were only able to provide a report on the statistics of the most commented parts of the second phase, with no substantial report summarizing or analyzing the comments' arguments.[29] Thus, the chairs of each session provided this analysis and then receive inputs from the participants, according to the rules of interaction in the floor. All the transcripts of the interventions were also made available online.

Drafting Committees

Every working session in the plenary had two chairs[30], one permanent and one rotating, as well as five advisers. Two of the five advisers for each working session were

29 NETmundial. "Final report on comments of the Draft Outcome Document is available," http://NETmundial.br/blog/2014/04/22/final-report-on-comments-of-the-draft-outcome-document-is-available/

30 http://netmundial.br/agenda/

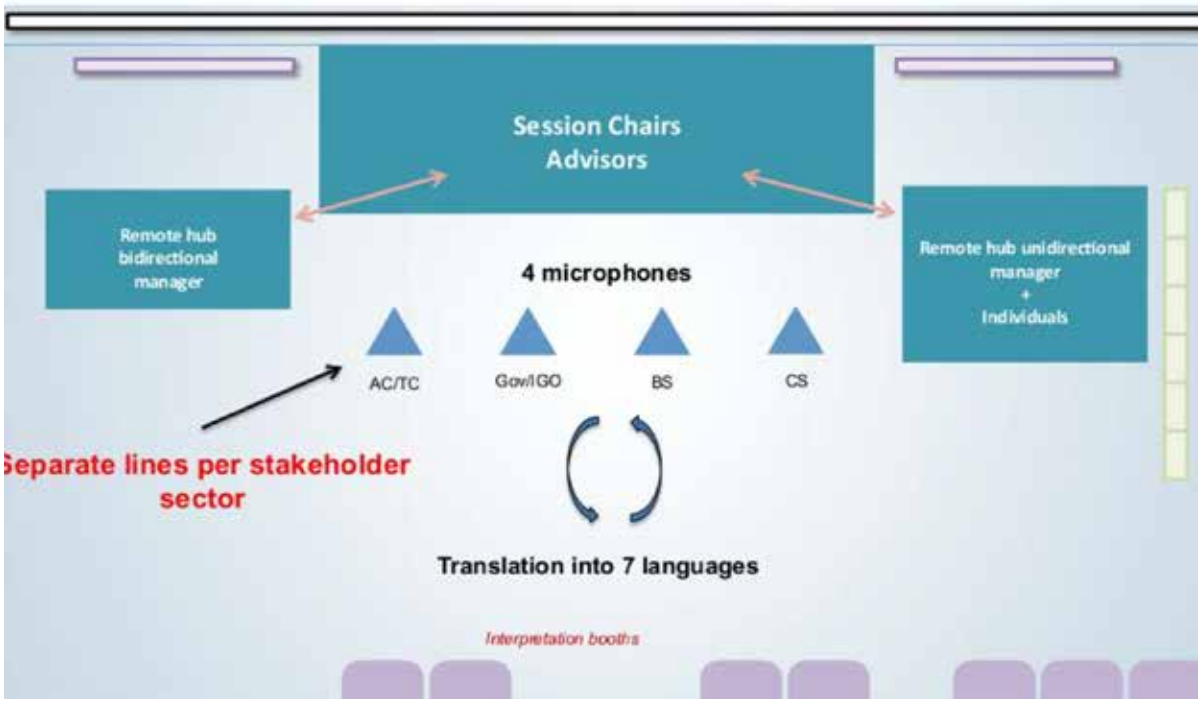

Figure 4: Stage Layout for the Plenary Sessions

Source: NETmundial Executive Secretariat

previously selected – occasionally with some level of controversy - by their respective stakeholder groups to compose the EMC. While the other three advisors in each session were one representative from the UN system and two government representatives, one of them was always from the Brazilian government. The criteria of selection for the chairs was unclear: Two of them were previously selected by their constituencies as representatives from academia for the HLC and the EMC, while the other three chairs were not picked from any committee previously established. All the stakeholder groups were represented in the working sessions for the roadmap, while a representative from academia was missing in the working sessions on principles.

Chairs and advisors formed the so-called drafting committees, which were meant to convene by the end of each respective working session for re-drafting a new version of the corresponding part of the text that was debated in plenary. Drafting sessions were open to all participants, but theoretically only chairs and advisors would be allowed to speak. Practically, that was not the case. Several observers started to interact with the chairs and advisors of the drafting committee, a process that might be natural in other diplomatic environments. However, in that particular context, it threatened the goal for balanced representation during discussions about the document. This perfectly exemplifies the complex and delicate challenges that organizers face when working towards an open, participative and inclusive multistakeholder process from beginning to end.

The impacts that such changes in the meeting dynamics had on the content of the final statement of NETmundial are to be evaluated in the next chapters of this book. Nevertheless, in terms of process, it is fair to say that such a move could spoil the whole process, as multistakeholderism can only work if there is an equal balance in discussions and decision making between stakeholder groups. If the observers in the room ended up having more power and influence over the final document than the discussions and suggestions made throughout the plenary and online consultation process, than the system could be considered faulty. A small technical problem also contributed to these issues, as some of the transcripts from the other sessions were not available for the advisors and chairs during the drafting negotiation.

Adoption of the NETmundial Multistakeholder Statement

Once the drafting session was over the final text was introduced for consideration by the High Level Committee in the same room. This session was open for observers as well. However, unlike the previous session, the only speakers were the representatives of the committee.

There was some dissent, particularly focusing on the fact that the final version of the draft did not address net neutrality nor have a clear roadmap for the future evolution of the internet ecosystem. Other stakeholders also expressed hesitation about the aspects of the IANA transition and some questioned the validity of a multistakeholder approach. Nevertheless, the room was also feeling the pressure to end such a dedicated, innovative and even brilliant process on good and celebratory terms. Therefore, the HLC decided that it was time to take the text to the plenary session to be approved.

Back in the plenary, the chair of the meeting quoted the process as "a milestone in the history of internet governance" and presented the document as something that "cannot be construed as legally binding. It is a broad convergence of ideas, perceptions, suggestions, and visions coming from different stakeholders in different parts of the world."[31] Then he proposed that the document should be called, the "NETmundial Multistakeholder Statement and approved by acclamation." The document was approved with standing ovation by the plenary.

Concerns about the process and the final documents were raised by government representatives from Russia, India, Cuba and by a joint statement from some civil society representatives. Each of these statements raised some issues with the content of the document and questioned the final drafting process and the lack of clarity on how the comments were incorporated.[32]

Conclusions

NETmundial process was remarkable in that it served as an experimental model, moving towards an open, transparent and participative multistakeholder internet governance process. However, it is just a first step in the long road progressing towards the development of truly democratic and inclusive decision making internet

31 NETmundial. "References," http://www.NETmundial.org/references/

32 Transcriptions of sessions: NETmundial Closing Session: http://www.NETmundial.org/references/

governance bodies. As such, we can highlight many lessons learned and raise important questions to be addressed for improvement:

Favorable aspects

- The international political context facilitated the development of such an inclusive and open event due to the recent revelations of pervasive monitoring and surveillance and the accompanying erosion of trust by internet users around the world;
- Previous experiences with multistakeholder processes and online open consultations internationally and in Brazil helped to pave the way;
- Legitimacy was partially created through multistakeholder committees with representatives appointed by each stakeholder group through their own processes;
- Usage of technology to prepare and comment on a reference document and to ensure remote participation from different parts of the globe was vital for wider engagement;
- There were great efforts to make each level of the preparation process open and transparent;
- There was a great deal of innovation in processes and procedures to improve multistakeholder mechanisms;
- Organizers constantly measured and monitored the preparation process in order to fix any issues with inclusion and transparency;
- NETmundial served to demonstrate the potential and viability of a multistakeholder approach for internet governance. However, the process and methods for balancing power relations still need improvement;
- The extensive documentation of each of the stages makes it easier to find points for improvement and to replicate the experience.

Unresolved questions about procedures

- How do we work to empirically categorize and quantify the level of openness, inclusion and participation in a meeting? To what degree is democracy quantifiable?
- How do we verify that the contributions have been taken into account and that innovative processes are not just a placebo for participation?
- How do we seek to improve methods for multistakeholder decision making procedures? To what degree should full consensus be needed to approve a text?
- What can be the impact of a text that has been approved by acclamation?
- How do we adapt the format and organizational innovations from NETmundial to other internet governance foras?

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A Perspective from the Technical Community

Markus Kummer

This paper draws on an essay I wrote for a publication published as an input into NETmundial[1] as well as a contribution ISOC submitted to the IGF preparatory process.[2] It reflects a presentation I gave on the "NETmundial effect."[3] The paper conveys my personal opinions and should not be interpreted as representing the official position of the Internet Society. It is written from the prspective of someone who was intimately involved in the process – first representing a government during the World Summit on the Information Society (WSIS), then working for the United Nations, first as head of the Secretariat of the Working Group on Internet Governance (WGIG) and subsequently the Internet Governance Forum (IGF), and lastly, for a non-governmental organization, the Internet Society. I was also one of the Co-Chairs of NETmundial.

The year 2014 was a crucial one for internet governance. The international community will have to reflect on what kind of internet we want and how we want to answer many open questions related to its governance. The disclosures last year of pervasive government surveillance programmes marked a seismic shift in the IG landscape, and the large-scale nature of these programmes made internet users realize that the chain of trust—essential to the good functioning of the Internet—had been broken. This realization created a sense of urgency to review current IG arrangements and to rebuild users' trust in the internet, its function, and how it fits into society. This was the underlying theme at the 2013 IGF meeting, as the general agreement was that the IGF was the ideal place to pursue these discussions and that the multistakeholder format was the only way forward. Reviewing current IG arrangements and rebuilding user trust was also the underlying theme of NETmundial, which in turn endorsed the multistakeholder approach and confirmed the importance and relevance of the IGF.

In this regard, NETmundial was a watershed moment. Undoubtedly a success, NETmundial was a celebration of the multistakeholder model, showcasing stakeholders' ability to collaborate and move towards a common understanding on critical issues. Perhaps the most encouraging aspect of NETmundial was that governments accepted that other stakeholders had as much to say as they did and that their voice counted as much as the voices of governments.

The meeting, however, did not fall from the sky. NETmundial built upon many years of internet governance history. In order to fully understand its true impact, it is worth looking back on how the multistakeholder discourse evolved.

The Evolution of a Concept and a Term – "Multistakeholder Cooperation"

When the concept of holding a World Summit on the Information Society (WSIS) emerged, the framework was based on tradional UN summits. The United Nations General Assembly (GA) set the parameters for the World Summit of the Information Society (WSIS) in 2002. By adopting Resolution 56/183, the GA designed the Summit as an intergovernmental process, but at the same time invited "non-governmental organizations, civil society and the private sector to contribute to, and actively participate in the intergovernmental preparatory process of the Summit and the Summit itself."[4] This invitation, extended to non-governmental statekholders, created expectations that the intergovernmental process was not equipped to meet. The WSIS I preparations in

1 "Stakes are High: Essays on Brazil and the Future of the Global Internet." Produced by Internet Policy Observatory. The Annenberg School of Comunications at University of Pennsylvania. http://globalnetpolicy.org/wp-content/uploads/2014/04/StakesAreHigh_BrazilNETmundial_final.pdf

2 Internet Government Forum. "IGF 2014 – Producing Tangible Outcomes on Best Practices." http://www.intgovforum.org/cms/images/2014/IGF2014/IGF-2014Request-for-Public-Input.v3.pdf

3 Annenberg-Oxford Media Policy Summer Institue.

4 United Nations General Assembly. 2012. Resolution adopted by the General Assembly. http://www.itu.int/wsis/docs/background/resolutions/56_183_unga_2002.pdf

2002 and 2003 were contentious, as many developing countries were suspicious of accepting new actors. Negotiations, to a large extent, focused on procedural rules and on how governments would interact with nongovernmental participants. By and large, the process was government-driven. In decisive moments, the nongovernmental participants were sent out of the negotiations. I chaired some of the negotiating groups on behalf of the host country government – Switzerland – and, at the request of some member states, had to comply with the rules of procedure, sending out all participants who did not belong to a governmental delegation. It was evident then that nongovernmental actors brought more expertise to the negotiating table than the diplomats who were negotiating the texts. The diplomats, however, who were very skilled at their own game, found it easier to negotiate and compromise behind closed doors, where they reached a satisfactory compromise on language relating to human rights and designed a process to deal with internet governance.

By asking the Secretary General of the United Nations to set up a Working Group on Internet Governance (WGIG), WSIS changed the dynamics of the process. The WGIG terms of reference called for a process that involved all stakeholders without any reference to any intergovernmental process. WGIG worked according to Chatham House Rules, and all its members participated as equals, in their individual capacity. All their meetings were preceded by consultations open to all interested stakeholders, which, like WGIG itself, had no rules of procedure or any particular protocol. Participants were able to speak on a "first come, first served" basis in a broad-based and transparent process that allowed community input into the WGIG deliberations. This was in stark contrast to the WSIS procedures, which followed traditional intergovernmental protocol, with governments speaking first and all the other actors at the end. WGIG also allowed the technical community to manifest itself – usually in the form of nonprofit organizations responsible for the day-to-day running and management of the internet.

WGIG was a milestone for the UN. It set new standards for open and inclusive multistakeholder cooperation with a minimum of procedure and formalities and, from 2005 onwards, set the benchmark for openness and inclusiveness. WGIG influenced WSIS II in Tunis in 2005 in terms of procedure and substance:

- In terms of procedure, gone were the negotiations behind closed doors. While the process remained essentially intergovernmental, other stakeholders, in particular those representing the technical community, were regularly asked to comment and provide a reality check for the intergovernmental negotiations. They were not, however, entitled to ask for the floor; they were only able to speak when invited by the Chair to provide their comments.
- In terms of substance, the WGIG report provided the main input into the Tunis negotiations. By and large, WSIS II endorsed the WGIG Report, its working definition of internet governance, its list of issues, and its assessment that "the existing arrangements for Internet governance have worked effectively."[5] Above all, WSIS II picked up the proposal by WGIG to set up a "new forum for policy dialogue" – the Internet Governance Forum (IGF).

The IGF built on the format of the WGIG's open consultations, providing a platform for all stakeholders to take part on equal footing. Perhaps its biggest achievement was that it was able to create a sense of community, a place where all participants felt comfortable discussing delicate issues.

WGIG also introduced the term "multistakeholder," which had been rarely heard or used in the context of the internet before. In the discussions on internet governance during the first phase of WSIS, the term typically used to describe the existing arrangement was "private sector leadership," in line with the language used in the setting up of the Internet Corporation for Assigned Names and Numbers (ICANN). The WGIG then consolidated the use of the term "multistakeholder," and the WGIG Report itself uses it eleven times, identifying the need for a "global multi-stakeholder forum to address Internet-related public policy issues." Finally, it was via WGIG that the term found its way into the outcome document of WSIS II – the Tunis Agenda for the Information Society.

Building on the WGIG model, the IGF created a platform for policy dialogue in which all stakeholders took part on equal footing. The Secretary General appointed an Advisory Group consisting of all stakeholders, also taking into account the newly identified stakeholder group of the "academic and technical communities." The Advisory Group soon became known in popular parlance as Multistakeholder Advisory Group, or by its acronym MAG. From February 2008 onwards, all UN press releases officialized the name and its acronym.

By 2008, the concept of multistakeholder cooperation was well established in IG circles and had spread to Intergovernmental Organizations (IGOs). From the OECD Ministerial Meeting on the Future of the

5 Tunis Agenda for the Information Society, Para 55 (2005). http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

Internet Economy in Seoul[6] to the Council of Europe Ministerial Conference in Reykjavik in 2009[7] to the 2011 G8 Deauville Declaration—all supported the "multistakeholder model for Internet governance."[8] The OECD in 2011 also adopted Principles for Internet Policy Making with the stated objective of establishing a "framework to ensure the continued and innovative growth of an open Internet economy through multistakeholder co-operation." [9] In 2013, the term was also picked up by the International Telecommunication Union (ITU) in its World Telecommunication/ICT Policy Forum (WTPF), where member states were asked to consider a draft opinion on "Supporting Multistakeholderism in Internet Governance."

While there is no generally accepted definition of its meaning, the term "multistakeholder" was seen as a key ingredient of the internet model by this time. The US government, when announcing its intention to transition its stewardship of the IANA functions, elevated "supporting and enhancing the multistakeholder model" to one of the four principles that should guide the process.[10]

NETmundial was able to build on the ground laid by WGIG, WSIS and the IGF. The IGF created the spirit of cooperation among stakeholders that paved the way for taking things a step further and moving towards a rough consensus on principles to advance internet governance.

Moving Toward "Rough Consensus"

NETmundial's methodology was part of its success. Compared to traditional intergovernmental cooperation, which is based on consensus and equal treatment of all participants, any contribution will be taken on board, regardless of its quality or relevance, and the agreement of all participating governments is needed to finalize a text. This leads to what is known in diplomatic jargon as a "Christmas tree approach," because the tree gets loaded with decorations as every delegate adds his or her pet subject to the text. The consensus principle allows an opinionated and skillful delegate to hold the rest of the international community hostage.

NETmundial chose the opposite approach. The São Paulo meeting was different from intergovernmental meetings in which governments usually agree on the smallest common denominator and one or two governments can block progress.The draft text that was submitted to the meeting reflected the input from an open multistakeholder process. The team that put together the draft focused on commonalities and ignored outliers. In the end, not everybody agreed with everything, but most participants could live with what was contained in the outcome document. The final outcome document – the NETmundial Multistakeholder Statement – was accepted as being "good enough" by most participants. It was noteworthy that only three governments disasscociated themselves from the statement, mainly because they did not find their input represented in the text and/or because they found the process that led to its adoption not sufficiently transparent and lacking appropriate rules of procedure.

Clearly, there was no consensus in the classical intergovernmental sense – it was more like the "rough consensus" the internet community is familiar with, pioneered by the Internet Engineering Task Force (IETF). The notion of "rough consensus" was developed by the Internet Engineering Task Force (IETF). It is part of its cyberlibertarian vision of the world, best embodied in David D. Clark's famous words, "We reject: kings, presidents and voting. We believe in: rough consensus and running code."[11] The concept of "rough consensus" is central to the IETF's mission. The way to achieve "rough consensus" is described by the IETF as follows:

> Working groups make decisions through a 'rough consensus' process. IETF consensus does not require that all participants agree, although this is, of course, preferred. In general, the dominant view of the working group shall prevail. (However, "dominance" is not to be determined on the basis of volume or persistence, but rather a more general sense of agreement). Consensus can be determined by a show of hands, humming, or any other means on which the WG agrees (by rough consensus, of course). Note that 51% of the working group does not qualify as "rough consensus" and 99% is better than rough.[12]

This is in line with what happened at NETmundial.

6 OECD Ministerial Meeting on the Future of the Internet Economy, 17-18 June 2008, Seoul.
7 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, Reykjavik, 29 May 2009. MCM(2009)011.
8 G8 Summit of Deauville – 26-27 May 2011.
9 "OECD High Level Meeting - The Internet Economy: Generating Innovation and Growth." Paris, 28-29 June 2011, http://www.oecd.org/internet/innovation/
10 NTIA Office of Public Affairs, "NTIA Announces Intent to Transition Key Internet Domain Name Functions," NTIA Press Release (March 14, 2014). http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions
11 In a presentation given at the 24th meeting of the Internet Enigineering Task Force (IETF).
12 IETF. "IETF Working Group Guidelines and Procedures," September 1998, https://www.ietf.org/rfc/rfc2418.txt,

NETmundial as an inspiration for strengthening the IGF

NETmundial was not able to provide answers to all open questions and concerns, but it was an important step forward. The meeting was a signal that the community is seeking to fulfill its commitment toward a better understanding of the different dimensions of internet governance, with its most important outcome being an endorsement the multistakeholder model of internet governance, and produced an outcome based on the aforementioned "rough consensus." The NETmundial Multistakeholder Statement identified solid principles and values that, while not new, confirm the value of the open, interoperable internet as a "global resource which should be managed in the public interest."[13] The value of these principles lies in the fact that they were approved by a large multistakeholder gathering.

In the second section, "The Roadmap for the Future Evolution of Internet Governance," NETmundial reaffirms the very nature of the IG framework as "a distributed and coordinated ecosystem involving various organizations and fora." It builds on WSIS and the Tunis Agenda and notes that "this model should be further strengthened, improved and evolved." In Section II, on "Issues dealing with institutional improvements" the NETmundial Multistakeholder Statement, while leaving open the question whether there is a need for any new institution or mechanism,[14] leaves no doubt that it considers the IGF part of the solution. It pays considerable attention to the IGF and identifies "a need for a strengthened Internet Governance Forum (IGF) and urges implementation of the recommendations by the UN CSTD[15] working group on IGF improvements by the end of 2015. The main thrust of the recommendations calls for outcomes, intersessional acitivities and more financial and structural stability, concluding that "a strengthened IGF could better serve as a platform for discussing both long standing and emerging issues with a view to contributing to the identification of possible ways to address them." [16]

13 Internet Governance Principles, preamble.

14 "Consideration should be given to the possible need for mechanisms to consider emerging topics and issues that are not currently being adequately addressed by existing Internet governance arrangements", NETmundial Multistakeholder Statement, "Roadmap", II.2.

15 The Commission on Science and Technology for Development (CSTD) is a subsidiary body of the United Nations Economic and Social Council (ECOSOC). The Commission has been mandated by ECOSOC to serve as the focal point in the UN system-wide follow-up to the outcomes of the World Summit on the information Society (WSIS).

16 "Roadmap", II. 3

In Section IV, the NETmundial Multistakeholder Statement identified further points for discussion and recommended that net neutrality – one of the most controversial issues dealt with at NETmundial – should "be addressed at forums such as the next IGF."

Section V's "Way Forward" also includes reference to the IGF, noting that it is expected "that the NETmundial findings and outcomes will feed into other processes and forums, such as the post 2015 development agenda process, WSIS+10, IGF, and all internet governance discussions held in different organizations and bodies at all levels." As a landmark meeting in 2014, NETmundial's decision to identify the IGF as an appropriate forum to further discuss internet governance policy issues such as net neutrality reaffirms the relevance of the IGF.

In a kind of symbiosis, NETmundial built on the groundwork laid by the IGF, and is now revealing a path forward for the IGF by preparing it to take the next steps towards convergence and the resolution of several complex issues. The NETmundial Multistakeholder Statement wording, pointing to outcomes and intersessional work, provides a solid foundation on which to build.

The IETF as a Role Model for the IGF to Produce Policy Outputs

During the planning process for this year's IGF meeting, the Internet Society suggested adopting a policy development process inspired by the IETF's approach to the development of internet protocols and informational documents. Key to the IETF methodology is the principle of voluntary adoption and "rough consensus." IETF standards are not mandatory; the market and internet users eventually decide on their adoption.

No model will translate entirely, but the IETF could serve as an example for how the IGF might evolve, especially with respect to the development of Internet protocols and informational documents.

The IETF is the internet's premier standards-developing organization and shares some characteristics with the IGF insofar as it is not a membership organization and is open to all interested participants. In "The Tao of IETF: A Novice's Guide to the Internet Engineering Task Force," it states that "The IETF is really about its participants. Because the IETF welcomes all interested individuals, IETF participants come from all over the

world and from many different parts of the Internet industry."[17] The same document also explains that "The IETF makes voluntary standards that are often adopted by Internet users, but it does not control, or even patrol, the Internet."

New ideas are typically first tested in a Bird of a Feather (BoF) session. Derived from the adage 'birds of a feather flock together', the IETF process has those proposing new ideas to create working groups and, once a consensus is reached, move forward. These key concepts – or parts thereof - could be adapted and transferred to the IGF in order to produce non-binding policy outcomes. The advantage of the IETF model is that it provides options to the community in terms of how they address an issue with a variety of documents, ranging from Informational to Experimental and Best Current Practice (BCP). The IGF community could explore these various choices and, through trial and error, find the most suitable policy approach.

The concept of documentation related to best practices will be tried out in the forthcoming Istanbul meeting in an attempt to provide tangible outputs. In the past, the IGF tried to promote best practice sessions and organize Best Practice Forums. Unfortunately, due to lack of resources, these sessions were not documented sufficiently. Internet users have many questions. While there may be answers, they may not be well understood or widely known, and they need to be documented. The IGF can be a place to publicize possible solutions to problems addressed in the IGF context.

Istanbul could be the starting point for developing intersessional work on substantive issues, building on the work of existing Dynamic Coalitions and possibly creating new ones. The latter would mostly work online, and meet physically during the IGF preparatory meetings as well as the annual IGF. Ultimately, the IGF would have to develop a process that allows for adoption of documents by rough consensus, which would not be binding, but open to voluntary recognition and adoption by all stakeholders, and the meeting structure would need to be adapted accordingly and introduce Bird of Feather meetings (BoFs), revived Best Practice Forums and provide a framework for Dynamic Coalitions.

The IGF mandate is sufficiently flexible to allow for this kind of approach to evolve over the years. The Istanbul meeting should be the starting point for such an evolution, which would make the IGF more relevant and encourage multidisciplinary, collaborative, global, and regional policy development on pertinent issues and the sharing of best current practices, building on voluntary principles and standards for interoperable global policy solutions.

17 IETF. "The Tao of IETF." Created 2 November 2012. http://www.ietf.org/tao.html

Conclusion

The IGF has proved its worth as a "go-to place" where the community shares experiences and exchanges information, and is well-positioned to build on the output from NETmundial and lay the roadmap for rebuilding online trust. Freed from the constraints of negotiations and decision-making, it is the appropriate forum for unencumbered and frank discussion of controversial issues.

While the Tunis Agenda[18] allowed for the possibility of making recommendations, the first years of the IGF's existence would have been too fragile to allow for a robust discussion on consensus-building. As the IGF evolved, the quality of the dialogue progressively matured, and in Bali, the IGF was ready to move discussions towards convergence. The agenda for the 2013 meeting was guided by the attempt to make the IGF more responsive to the broader policy discourse defining the internet governance space, and now is the time to move the IGF toward more tangible outcomes, as recommended by NETmundial and the CSTD Working Group on Improvements to the IGF.[19]

The 2014 IGF Istanbul meeting should be the starting point for such an evolution. The IGF is best placed to take these discussions forward. It provides protection, legitimacy, and credibility to the multistakeholder model, since it is the only truly open and inclusive multistakeholder platform under the UN umbrella. It has 'soft power', which relies to a large extent on the legitimacy and authority of the Secretary-General of the United Nations as the convenor of the IGF.

There is also a sense of urgency: the IGF needs to demonstrate that it is able to renew itself and adapt to a changing internet governance landscape. The Istanbul meeting is, therefore, an opportunity the IGF cannot afford to miss. The meeting needs to provide the basis for strengthening the IGF and taking the discussion from NETmundial forward on the long path toward strengthening international consensus on multistakeholder internet governance and creating a new chain of trust in the internet itself.

18 "Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations." Tunis Agenda, Para 72 (g).

19 United Nations General Assembly. 2012. Report of the Working Group on Improvements to the Internet Governance Forum. http://unctad.org/meetings/en/SessionalDocuments/a67d65_en.pdf

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A Perspective from the Private Sector: Ensuring that Forum Follows Function

Vint Cerf, Patrick Ryan, Max Senges, Richard Whitt

In this chapter we share our perspectives as private sector stakeholders and participants in the development of the IGF over the last 10 years. We begin by stressing the role private enterprise has and wants to play in the internet's development. Notwithstanding the *sine qua non* condition of the private sector providing the internet's infrastructure and services, we lay out our argument for IG as a shared responsibility of governments, civil society and the private sector. In the second half of the chapter we list why participation at the IGF is beneficial for companies, followed by an analysis of opportunities to strengthen the IGF as an institution and enhance its impact in the short term. We then close our chapter with a proposal meant to improve the long-term utility and effectiveness of the IGF by developing its three core functions: (1) identify emergent and continuously evolving issues; (2) frame them as modular and solvable challenges; and (3) document, track and archive the developing solutions.

By all measures, the private sector cares a great deal about internet governance, seeking both entrepreneurial opportunities and the chance to contribute to future internet developments. One of the ways that Google looks at the size of the internet is through the number of unique World Wide Web uniform resource locators (URLs). In 2008, the Web Search Team published what was (then) a significant milestone: the indexing of 1 trillion unique URLs.[1] Amazingly, since that time, the number of unique URLs has grown to 60 trillion.[2] In addition to the organic growth of the internet among the existing users, another five billion people worldwide have yet to come online.[3] Assuming modest growth of content to match users, there will be significantly more than 200 trillion unique URLs by 2020. Of course, URLs are not demonstrative of the value of the internet, but it is one metric of growth. Where is the fuel for this growth? Although the origins of the internet may be found in the university and government sectors, the internet is now financed almost entirely by the private sector.

While this growth takes place, a tussle is afoot to control abuse of the internet's current and potential infrastructure and facilities. As governments and civil society rightfully strive to ensure privacy, security and safety for internet users, at the same time governments in all corners of the world are making it difficult for entrepreneurs to continue to provide globally consistent platforms and experiences for users. In Europe, for example, the European Court of Justice's ruling created a new right of action for internet users to request that user content be removed from search engine indices.[4] In Turkey, the host country for this year's Internet Governance Forum (IGF), a fiery battle about online freedom of expression has been taking place. A study from Dalberg Consulting illustrates the tension well. The popular Turkish website Ekşi Sözlük estimates that the cost of compliance with local rules regarding website content equals 15 percent of total operating revenue, which includes the costs of engaging in more than 250 lawsuits in 14 years.[5] The website's founder, Sedat Kapanoğlu, warns that "a business of Twitter or Facebook's size and scale could never happen in Turkey until the legal system is changed to be more conducive to these types of businesses."[6] As another example, the Thai website operator of 212cafe.com closed the business and exited the market because of locally imposed criminal sanctions, even though his website was merely a platform for user-moderated discussion.[7]

1 Jesse Alpert & Nissan Hajaj, "We knew the web was big," *Official Google Blog*, Jul 25, 2008 available at http://goo.gl/RtmG

2 Google does not regularly publish these statistics, however, we consulted with the Web Search Team and 60 Trillion is the estimate as of this writing.

3 David P. Reed, Jennifer Haroon, and Patrick S. Ryan, "Technologies and Policies to Connect the Next Five Billion," January 13, 2014. *Berkeley Technology Law Journal*, Vol. 29, 2014, (forthcoming), available at: http://ssrn.com/abstract=2378684.

4 *See* David Drummond, "Searching for the right balance," *Official Google Blog*, Jul. 11, 2014, available at http://goo.gl/0EuHUc

5 Dalberg Consulting, "Open for Business? The Economic Impact of Internet Openness," Report, March 2014, at p. 37, *available at* http://goo.gl/hGgY9s

6 Ibid.

7 Ibid., at p. 5.

These are just a few examples of ongoing internet governance challenges and the impact that they have on business. It is crucial that the private sector joins forces with other internet stakeholders to level the global governance playing field. In this chapter, we argue that all stakeholders should jointly design and implement a governance ecosystem that allows all actors to contribute to internet growth while protecting individual rights and varied cultural expectations. No single stakeholder should drive the future of the internet; instead, interdependent cooperation is key.

The Internet Governance Forum has been in operation since 2006 and has met annually at the invitation of a host country. A multi-stakeholder advisory group (MAG), led by a chairman appointed by the UN Department for Economic and Social Affairs (UNDESA), organizes the annual meeting, deciding among proposed topics which will be on the agenda. A variety of formats allow issues to be articulated and various perspectives to be shared. In the following sections, we will provide an overview of the value of the IGF, and in the second half, we will look at its functionality and propose areas for improvement.

Looking at the Internet and its Governance Holistically

The internet is a "network of networks," along with the hosts and the devices on the "edge" that interconnect with each other through the network. It is an organic arrangement of computers and underlying communications platforms bound by common protocols and standards. This arrangement is transnational in scope and thus not linked to any particular physical location or nationality. From the end user's perspective, the resulting network is simple, general, and adaptable. However, four fundamental architectural components of the internet—end-to-end intelligence, layered structure, agnostic protocols, and voluntary interconnection—interact in highly complex and dynamic ways. In particular, the different internet layers (physical networks, software protocols, user applications, and content/services) exist independent of each other, yet rely on carefully calibrated interactions. Because the internet as a network is unaware of the contents of any particular packet, it is largely insensitive to applications that use its packet delivery capacity for end-to-end communication. The consequence is that new applications can be developed without changing the internet's underlying communication services.[8]

These fundamental design attributes can work together seamlessly, resulting in an open internet that brings numerous economic, social, and personal benefits. These benefits include enabling innovation, spurring economic growth, providing a free flow of information, and empowering human rights and sustainable, human-centered development. However, the internet also poses governance challenges for policymakers and other stakeholders, stemming from undesirable online behavior and undesirable offline behavior brought online.

The concept of internet "governance" is not always well-understood. One way of looking at governance is through the technical lens, where the basic idea is that the software-derived protocols, standards and best practices that make up the core of the internet's operation need continual innovation, revision and promulgation. For more than forty years, an assortment of technical standards bodies, volunteer organizations, policy-making institutions, and influencers like the Internet Engineering Task Force (IETF), the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Wide Web Consortium (W3C) have taken on this mission. Because these groups have open participation, employ "bottom-up," transparent processes, and rely on consensus-based approaches to decision-making, they are recognized as "multistakeholder" institutions that act as good stewards of the internet. Moreover, the fact that technical experts from diverse backgrounds are making decisions about something as vast and complex as the internet in an open and cooperative manner helps to preserve its overall utility. In addition to these questions of technical standards, governance can include conventions for behavioral norms, legal standards of practices, cooperation regarding criminal behavior, and the protection of users from harm. This is why we argued before that many institutions share the responsibility and stewardship for internet governance[9].

Some 90 percent of the total investment in the internet's content, services and infrastructure layers comes from the private sector. Nonetheless, the biggest obstacle standing in the way of healthy incentives for further investment in an open internet—and the resulting user benefits—is the potential for inconsistent and unpredictable actions by individual government bodies. While mostly well-intentioned, "top-down" government actions typically lack multistakeholder input and processes that are hosted and facilitated by participatory institutions. These government actions can

8 *See, e.g.* Richard S. Whitt, "A Deference to Protocol: Fashioning a Three-Dimensional Public Policy Framework for the Internet Age," 31 *Cardozo Arts and Entertainment Law Journal* 689, 754-56 (2013) (describing the fundamental design attributes of the Internet and how they interact to produce an open platform).

9 *See* Vinton G. Cerf, Patrick S. Ryan and Max Senges, "Internet Governance Is Our Shared Responsibility," *I/S: A Journal of Law and Policy for the Information Society*, 10 ISJLP 1 (2014) *available at* http://ssrn.com/abstract=2309772

also cause unintended side effects on the technology and business level, as they tend not to be well informed by an engineering-based understanding of how they will impact the internet's core design elements.

Joining Together for a Common Goal

Given the complexity of the internet ecosystem, it is crucial that the private sector collaborate with other stakeholders, namely civil society, the technical community and governments to evolve the framework for internet governance. Together, we must jointly design and implement a governance ecosystem that enables the efficient and effective engagement of many actors to contribute to the internet's organic growth while maintaining a balance that protects individual rights, safety and different cultural expectations. No single stakeholder should drive the internet's future; instead, all stakeholders should cooperate to preserve the layered, end-to-end, interconnected nature of the open internet. In this way, solutions to future challenges can be built successfully at the appropriate layers of the internet.[10]

All stakeholders share a common interest in championing the internet stewardship described above. Because government institutions have a unique capability to unduly affect the operation of the internet, they should balance the interests of internet users and their own core missions to protect their citizens from harm. Governments should acknowledge the legitimacy of the internet's multistakeholder governance framework, including its inclusive processes and expert participants, and limit the use of their own authority to actions that protect the interests of their citizens in ways that do not conflict with that framework.

The good news is that we already see a viable framework emerging. At the 2014 NETmundial in Brazil, participants embraced the concept of internet governance as a shared responsibility, one that all stakeholders must jointly design and implement. Transnational solutions for a global, interdependent internet call for multistakeholder institutions and processes built on broad technical foundations. These processes encourage open participation and typically lead to best-practice outcomes in much faster, less costly, more adaptable, and ultimately more effective ways than traditional national and international legislative and judicial processes. Herein, government bodies and international organizations can still operate within the scope of their institutional mandates, enacting their core missions and contributing their own particular perspectives.

10 Id.

Even more established is the IGF, which is the body designated to help ensure proposed internet governance solutions are based on best practices. For years, the IGF has been convening transnational annual meetings with nearly 2,000 stakeholders in attendance, along with regional meetings with thousands more in attendance. Notably, the regional meetings are self-organized events without any funding or support from the United Nations. One approach is for the IGF to become a global clearinghouse and deliberation space tasked with (1) identifying emergent internet governance challenges, (2) framing them so that experts from all relevant institutions can cooperate in developing and implementing innovative solutions, and (3) assuring that the progress and discourse are archived and available for analysis. This option would allow those institutions to devise solutions while maintaining existing systems and processes for those who still wish to use them. In this way, solutions can be fashioned in the appropriate global technical bodies, even as other institutions remain in place. A good example of this approach is ICANN's Uniform Domain-Name Dispute-Resolution Policy.[11] The IGF is already starting to operate in the multistakeholder spirit by self-organizing the national and regional collaborations mentioned above.

An effective, representative deliberation space might be structured in a couple of ways. David Clark has proposed a "tussle" approach that would inform the choice of design principles and features, along with the institutions selected to host the various debates. Clark posits that the internet's structure should facilitate "tussle space boundaries" so stakeholders can determine the best places in the network for control decisions to be made.[12] Another proposal would use a "modular governance" scheme, where internet technical bodies and businesses would collaborate with government and civil society experts.[13] In both cases, perceived challenges would be addressed by expert groups from relevant institutions at the appropriate internet layers. Similarly, the IGF could provide experimental zones for actors to discuss governance policies and allow for natural alignment on all levels (local, national, and regional). For internet policymaking, it is clear that form (and forum) should follow function, not the other way around.

11 Uniform Domain-Name Dispute-Resolution Policy, ICANN, available at http://goo.gl/z5gqu8.

12 David D. Clark *et al.*, "Tussle in Cyberspace: Defining Tomorrow's Internet," SIGCOMM '02 (2002).

13 *See* Whitt, "A Deference to Protocol" (citing work by Olivier M.J. Crepin-Leblond).

Incentives for Private Sector Engagement at the IGF

The IGF provides an important mechanism for interaction among individuals and institutions with a stake in internet evolution and governance. Because the internet is a complex technological network that mirrors the social, political, and business contentions of the offline world, it is important to design and operate a forum in which emerging issues can be (1) identified and deliberated, (2) framed or dissected in a way that enables relevant stakeholders to implement solutions outside the IGF, and (3) reported back and discussed by stakeholders both at home and in subsequent IGF meetings. These internet stakeholders each bring unique perspectives on critical interests such as privacy, security and surveillance and copyright. Although the private sector provides much of the funding and innovation for the internet's growth, it is vital that all stakeholders—private, public, and government—have a forum where their voices can be heard. Below we have included a short list of some of the salient benefits private sector stakeholders can reap by participating in the IGF.

Engage at scale. Private enterprise can reach multiple stakeholders in one place, saving time and travel costs. The abundant opportunities for meaningful networking and relationship building at the IGF have been documented repeatedly, and an effective "initiation" into the internet governance community is one of the benefits most often cited by new IGF participants. There's no other place where an executive, engineer, lawyer or lobbyist can reach so many influential people (1,500 to 2,000 in a typical IGF) on a global scale within the course of a week.

Promote a transnational multistakeholder Internet governance ecosystem. By participating in the IGF, companies can promote a governance ecosystem that maintains the transnational nature of the internet while ensuring that stakeholders from around the world contribute their technological, legal, entrepreneurial and policy expertise. This role seems particularly valuable to the private sector as inter-governmental institutions like the International Telecommunication Union (ITU) continue to assert their place, together with other initiatives that are relatively closed to the private sector (or are invitation-only) like the London process.[14] In addition, top-down national and regional internet mandates, like Europe's recent moves toward data localization, threaten to disrupt the transnational nature of the internet, as well as thwart the spread of progress and the level playing field that the internet creates.[15] The IGF can be used to address and remedy dangerous developments that we believe can lead to continued fragmentation of the web and deceleration of progress through bureaucratization.

Encourage cooperation and alliances. The non-binding nature of the discussion at the IGF allows competitive interests to be set aside in order to pursue broader shared policy goals. For example, ICC BASIS provides a mechanism for collaboration between internet companies like Google, Facebook and Microsoft and traditional infrastructure firms like AT&T, Verizon and Telefonica.[16] There is also increasing multistakeholder collaboration among quasi-governmental groups like the Organization for Economic Cooperation and Development (OECD), conveners like the World Economic Forum (WEF), and, increasingly, new organizations that address internet matters in a regional way, like the Broadband Internet Technical Advisory Group and the Internet Corporation for the Assignment of Names and Numbers (ICANN).[17]

Pursue policymaking tech-transfer and knowledge sharing. The unprecedented speed with which information can spread is at the root of the internet's success. The IGF is (and should be) the place where policy challenges and proposed solutions are openly evaluated and optimized based on stakeholder feedback. A good example is the promotion of best practices in the area of child protection. Child protection experts may have specialized venues and institutions, for example, but it's the added value of IGF expertise from technical, business and policy organizations that allows for the promulgation of the most effective solutions.[18]

Misunderstanding the cultural expectations of the "next 5 billion." The IGF is the space for internet dialogue among a heterogeneous participant mix, including thought leaders from developing nations. In fact, part of the IGF mission is to enable knowl-

14 *See* Wolfgang Kleinwächter, "The London Process Arrived in Budapest," *Circle ID*, Oct. 13, 2012, *available at* http://goo.gl/0lhgRr (describing the London Process)

15 Patrick S. Ryan, Sarah Falvey and Ronak Merchant, "When the Cloud Goes Local: The Global Problem with Data Localization," *Computer*, Vol. 46, No. 12, Dec. 2013, available at http://ssrn.com/abstract=2370850

16 The International Chamber of Commerce launched the Business Action to Support the Information Society (BASIS) as a direct response to the WSIS and to support policy matters that arise from activities such as the IGF. See ICC BASIS, "About BASIS," available at http://goo.gl/4yAvEo

17 For an overview of various organizaitons in the ecosystem, see Vinton G. Cerf (Chair) *et al*., "ICANN's Role in the Internet Governance Ecosystem," *Final Report of the ICANN Strategy Panel*, May 23, 2014, available at http://goo.gl/6AkznX.

18 See Google's Thoughts on IGF Reform in 2013, submitted to the United Nations IGF, February 14, 2013, http://www.intgovforum.org/cms/2013/contributions/contributions/Google%20copy.pdf.

edge sharing and relationship building among actors committed to using the internet to empower citizens and leapfrog economies.

This brief list above reinforces the fact that participation in and support for the IGF are worthwhile endeavors for private sector stakeholders. But the IGF is still a young institution, and internet governance remains a complex challenge. In the following section, we outline proposals regarding ways to strengthen the IGF.

Short and Mid-term IGF Improvements

In spite of the promise that the IGF brings to the private sector, the IGF needs to do many things in order to remain a viable organization. Below, we have outlined a few points that we think the IGF should address.

Document the MAG mandate. The IGF relies mostly on the establishment of the IGF in the Tunis Agenda and on a "Project Document" in its work.[19] The only written mandate of the IGF's Multistakeholder Advisory Group (MAG), the IGF's program committee, is found in a 2006 press release.[20] The MAG creates the agenda for the annual conference and does not (and should not) bear many other management or oversight responsibilities for the broader functioning of the IGF. Yet, even if there is a generally accepted practice about what the MAG's mandate is, there is a need, and an opportunity, to capture the MAG's roles, responsibilities and expectations. At a minimum, such an exercise could be part of a Web of Affirmation of Commitments that helps let all stakeholders know what the expectations are of the MAG vis-a-vis other stakeholders in the IGF and within the governance community, generally.[21]

Promote a culture of learning. Many believe that the strength and resilience of Silicon Valley and the companies based there comes from embracing missed expectations, shortcomings and past experiences as opportunities for learning. As Susan Wojcicki (YouTube's Senior Vice President) explained, "[P]eople remember your hits more than your misses. It's okay to fail as long as you learn from your mistakes and correct them fast."[22] Like the private sector, the IGF is far from infallible. However, the IGF culture has not yet developed into one that acknowledges and learns from its mistakes and then subsequently sets courses for improvement. One example that reinforces this point is the way IGF host countries are selected and the manner in which Host Country Agreements (HCAs) are executed. The UN takes the (reasonable) position that the host country should cover all IGF meeting costs. However, those costs vary from meeting to meeting, are hard to document and predict, and there are opportunities to handle these expectations more transparently and in advance. In 2013, the IGF community experienced a dangerous near-miss when the host country, Indonesia, sought additional financing for the event.[23]

Although the community stepped up to provide the support needed, this experience demonstrated the value in transparent financial-planning efforts. There are some relatively easy things that can happen to course-correct for the future: for instance, the execution of the HCA could take place simultaneously with the selection of the country, not (as is often the practice) a few days before the event begins.

Implement transparency mechanisms. The IGF has the opportunity to be an example for open and transparent governance, and there are ways that the multistakeholder community can contribute to the IGF's vision in ways that do not yet happen. This can be a missed opportunity. For example, in 2012, the UN's Department of Economic and Social Affairs (DESA) cancelled the search for an executive director because of lack of funding for the role.[24] The cancellation of the position contrasted with the opening of the requisition and the job posting, which was public. Although the MAG and donor community cannot substitute for the leadership that the UN brings, there are opportunities that could be explored for greater involvement of the community in certain aspects of the IGF's leadership. For example representatives from each stakeholders group could work with the UN Secretariat in organizing and developing the capacity and growth of the IGF itself, beyond the work of the program committee. This would unleash and empower other areas of the community to take on broader, longer-term initiatives, such as fundraising and capacity building of the IGF as an institution.

19 United Nations Funds-In-Trust Project Document, U.N. Document GLO/11/X01 Apr 1, 2011, available at http://goo.gl/s48kQx

20 Secretary-General Establishes Advisory Group to Assist Him in Convening Internet Governance Forum, U.N. Document SG/A/1006, PI/1717, May 17, 2006, available at http://goo.gl/a4XpkK

21 For a description of the Web of AoCs, see Cerf, ICANN, cited supra.

22 Susan Wojcicki, "The Eight Pillars of Innovation," Think With Google Newsletter, July 2011, available at http://goo.gl/UYoOyl

23 Shreedeep Rayamajhi, "IGF 2013 Cancelled by Indonesia," Internet Governance Diplomacy, Jul 25, 2014, available at http://goo.gl/mpVaJ1

24 Marília Maciel, "Report of the CSTD Working Group on the improvements to the Internet Governance Forum," Center for Technology and Society Fundação Getulio Vargas, May 21, 2012, available at http://goo.gl/71IQHr

Improvements for Long-term Utility and Effectiveness

After reviewing the mandate[25] of the IGF again, we see the following three clearing house functions as central to developing the IGF as *the* transnational platform for facilitating governance of the internet with optimal utility for all stakeholders and high effectiveness in facilitating the search for solutions that balance the interests of all stakeholders.

1. Identify Issues

The IGF should help to find significant problems that arise in the current practices of users, companies and governments.[26] The IGF workshop proposals and selection process already address this function and also at the workshops themselves emergent phenomena are discussed and defined. Especially the workshop proposal process should be made more transparent and collaborative, and also the workshops could benefit from a more structured and participatory approach, rather than hosting panels of experts who debate and share their perspectives.

2. Frame Challenges

The process of identifying the issues already triggers the stakeholders to frame challenges and define the problematic phenomena.[27] In the second function the problem is analyzed by the experts attending the IGF and stratified ideally into modular challenges which are maximally independent when it comes to the (1) core technical functions,[28] (2) the content and services realm as well as matters of human rights.[29] Another task for workshop participants is to identify the institutions which hold the relevant mandates needed to address the problems. Two features of this approach make it adequate to the IGFs role as a non-decision making platform tackling a wide variety of continuous and emergent challenges: The work is carried out by institutions that have the mandate or voluntary interest to deal with a challenge. Each institution can decide in what constellation of collaborators it wants to address which problem. The setup hence (i) allows for competing or parallel approaches and (ii) positions the IGF as facilitator rather than responsible for finding solutions to the various persistent challenges and constantly emerging issues.

3. Document/Track

At the end of each IGF workshop, leaders give an update about the progress and results of the workshop topic.[30] For example, documenting developments of new and updated framing of issues, new groups of stakeholders working on solutions, and any perspectives on agendas coming up for the next year. This subsequently allows for identifying and making work that happens between IGFs transparent. It is important in this context to distinguish between documenting the activities (and processes), tracking the progress (using metrics and methods used by the stakeholders working on the challenges) and archiving the evolution of the issues addressed in a way that makes it accessible. Especially the archiving function can position the IGF as an accountability mechanism by documenting the activities of the institutions identified as relevant to address an issue.

The following illustration depicts the flow of the three functions of the IGF platform in a sequential manner. Importantly "Identify issues" is complemented by a sub-function which is to "Report back to the community", i.e. informing what progress has been made over the year between the IGF conferences. This function can be done mostly via the channels of the 3rd function (Document/Track) and feeds into the first function, namely to identify what the persistent or newly emergent issues are.

We believe the IGF has the mandate and potential to serve these core functions and thereby stay a neutral non-decision-making platform dedicated to bringing all relevant institutions and experts together and facilitating the coordination of partners so that they can address the challenges relevant to them. These core functions do not exclude the other important functions the IGF serves - like capacity building or promoting universal access - as outlined by its mandate. We simply focused on these three areas as they seem at the heart of the

25 See Mandate of the IGF as set out in Paragraph 72 of the Tunis Agenda, adopted on November 18, 2005, available at http://www.intgovforum.org/mandate.htm

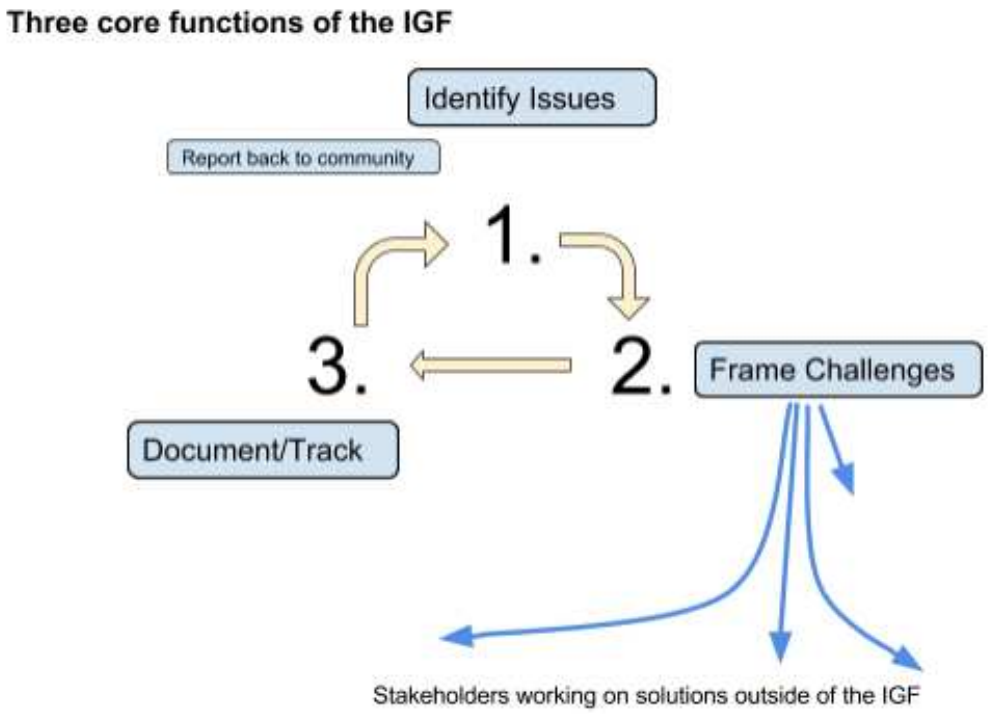
26 Ibid., g) of the IGF mandate states "Identify emerging issues, bring them to the attention of the relevant bodies and the general public.".

27 Ibid., d) of the mandate states: "Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body."

28 See Richard S. Whitt, "A Deference to Protocol: Fashioning a Three-Dimensional Public Policy Framework for the Internet Age," 31 Cardozo Arts and Entertainment Law Journal 689, 754-56 (2013) (citing work by Olivier M.J. Crepin-Leblond).

29 The provision of fundamental freedoms and rights serves as normative compass for stakeholders attempting to solve challenges on all layers.

30 See footnote 26; Inter alia "Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes" and "Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities."



potential value generated by the IGF; especially taking stewardship and accountability of all stakeholders into consideration, while allowing for maximal freedom to form groups that seek solutions within their mandate but outside the IGF.

Conclusion

In the past decade, the IGF has proven itself as one of the most important global fora for the private sector to engage in meaningful policy debates that affect the growth and future of the internet. In order for the IGF to remain relevant, however, it must continue to learn, develop and grow, and to establish an ability to (1) identify emerging issues, (2) frame these issues as modular and solvable challenges, and (3) document/track and archive the developments. With a program in place that accomplishes these goals in an open, transparent manner, the IGF can become the clearinghouse for internet governance and establish itself as a permanent part of the ecosystem.

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A Perspective from Civil Society

Jeremy Malcolm

Along with the International Criminal Court, the Mine Ban Treaty[1] and the Disability Convention,[2] the Internet Governance Forum (IGF) is another global governance innovation that would likely not have happened but for civil society's intervention.[3] This is no coincidence as civil society had the most to gain from the establishment of a forum that could amplify its voice in global public policy development processes.

When civil society organizations wish to influence public policy developments in the area of Information and Communication Technologies (ICTs), as in other areas, they start from a very weak and under-resourced position. According to statistics compiled by the Center for Responsible Politics, last year, US-based technology companies spent over $141 billion on lobbying activities, with the assistance of no fewer than 1,124 paid lobbyists. Compared to this, the resources available to civil society are a veritable drop in the ocean.[4]

Faced with this reality, the idea of a relatively centralized forum on transnational internet-related public policies, to which all stakeholders would have equal access, and which would be structured to incorporate deliberative democratic processes that would privilege the best ideas rather than the deepest pockets,[5] was naturally appealing to civil society. So too for many developing country governments, which have also experienced difficulties in engaging in global public policy processes in the ICT sector.[6]

Civil Society's Vision for an Internet Governance Forum

While of course civil society is diverse and often internally conflictual, when recommendations for the establishment of an Internet Governance Forum were first developed by the Working Group on Internet Governance (WGIG) in 2005, they were broadly welcomed by civil society stakeholders, albeit with a few reservations about whether the new body should be linked to the United Nations.[7] The proposal's positive reception ought not to have been surprising, since representatives from civil society and academia were indeed amongst WGIG's most active participants. The relevant recommendation from WGIG's report stated:

> The WGIG identified a vacuum within the context of existing structures, since there is no global multi-stakeholder forum to address Internet-related public policy issues. It came to the conclusion that there would be merit in creating such a space for dialogue among all stakeholders. This space could address these issues, as well as emerging issues, that are cross-cutting and multidimensional and that either affect more than one institution, are not dealt with by any institution or are not addressed in a coordinated manner.[8]

Responding to the proposal, the Civil Society Internet Governance Caucus (IGC) remarked that:

> The forum should not by default have a mandate to negotiate hard instruments like treaties or contracts. However, in very exceptional circumstances

1 Paul van Seters, "Critical mass: the emergence of global civil society," in *Approaching Global Civil Society*, ed. James W. St. G. Walker and Andrew S Thompson, vol. 5, Studies in international governance (Wilfrid Laurier University Press, 2008), 25–37.

2 Janet Lord, "Mirror, Mirror on the Wall: NGO Legitimacy and Accountability in Human Rights Standard Setting," *Seton Hall Journal of Diplomacy and International Relations* (2004): 93–110.

3 WSIS Civil Society Plenary, "Much More Could Have Been Achieved: Civil Society Statement on the World Summit on the Information Society," 2005, https://www.itu.int/w sis/docs2/tunis/contributions/co13.doc, 7.

4 Aggregated statistics of the budgets of non-profit public interest groups in the technology sector are not available, but by way of example, the 2012 program expenditure of the largest such group in the United States, the Electronic Frontier Foundation, came to $3.5 million and at time of writing, it has 58 staff: see http://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=7576 and https://eff.org/about/staff.

5 Philip Pettit, "Debating Deliberative Democracy," in *Deliberative Democracy, the Discursive Dilemma, and Republican Theory*, ed. James S Fishkin and Peter Laslett (London: Routledge, 2003), 138–162.

6 Panos Institute, "Louder Voices: Strengthening developing country participation in international ICT decision-making," 2002, http://www.panos.org.uk/?lid=324.

7 IGC, "Initial Reactions to the WGIG Report," 2005, http://www.itu.int/wsis/docs 2/pc3/contributions/co23.doc, 3.

8 WGIG, "Report of the Working Group on Internet Governance," 2005, http://www.wgig.org/docs/WGIGREPORT.pdf, 10.

when the parties all agree that such instruments are needed, there could be a mechanism that allows for their establishment. Normally, the forum should focus on the development of soft law instruments such as recommendations, guidelines, declarations, etc.[9]

Accordingly, later in November of that same year, the World Summit on the Information Society (WSIS) resolved to establish such an Internet Governance Forum with a mandate based closely on what WGIG had suggested, including several paragraphs that would – if realized – be key to advancing civil society's ability to effectively advocate for ICT policies and practices that serve the public interest:[10]

a) Discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet;

b) Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body;

c) Interface with appropriate inter-governmental organizations and other institutions on matters under their purview;

d) Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities;

e) Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world;

f) Strengthen and enhance the engagement of stakeholders in existing and/or future Internet governance mechanisms, particularly those from developing countries;

g) Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations;

h) Contribute to capacity building for Internet governance in developing countries, drawing fully on local sources of knowledge and expertise;

i) Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes;

j) Discuss, *inter alia*, issues relating to critical Internet resources;

k) Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users;

l) Publish its proceedings.

All stakeholders welcomed those paragraphs that allowed for the general exchange of information and best practices amongst stakeholders – such as paragraphs (a), (d), (e), (h), (j) and (k) – and these are the paragraphs that were best realized in the IGF as it took shape since its first meeting in Athens in 2006. But it was the remaining paragraphs, less well realized to date, that could have a more direct impact in facilitating civil society policy advocacy at the global level. These paragraphs can be approximately grouped into the following classes of coordination, discussion, documentation and participation.

Coordination

There are a plethora of internet governance institutions; 41 of them were reviewed in one recent study,[11] but there are undoubtedly dozens more whose principles, norms, rules, decision-making procedures and programs help to shape the evolution and use of the internet. In any case, there are far too many such institutions than civil society has the capacity and resources to adequately engage with.

Paragraphs 72(b) and (c) offer a solution, promising a coordination mechanism that can intermediate between diverse institutions, processes and stakeholders; they also provide a venue for the discussion of issues that do not yet have a natural institutional home elsewhere. This incorporates what is often described (as elsewhere in this volume) as a clearinghouse or observatory function.

Discussion

As alluded to above, there are some issues that do not already have an appropriate institutional home, and the IGF has a mandate to fill that gap by providing a forum for discussion of those issues. This flows from paragraph 72(b) and (g), which overlap with the classes directly above and below.

9 IGC, "Initial Reactions to the WGIG Report," http://www.itu.int/wsis/docs2/pc3/contributions/co23.doc, 3.

10 WSIS, "Tunis Agenda for the Information Society," para 72.

11 Norbert Bollow, "Consumers in the Information Society: Access, Fairness and Representation," in *Public Interest Representation in the Information Society*, ed. Jeremy Malcolm (Kuala Lumpur: Consumers International, 2012), 181–214.

Documentation

Paragraphs 72(g) and (l) make clear that these discussions need not merely be abstract, but should result in tangible outputs, such as recommendations on emerging issues, that could be transmitted to all appropriate bodies and to the public for further action as appropriate.

Participation

Finally, while the coordination function and the discussion and documentation of outputs from the IGF are all very important, there will always be limits to the extent to which diverse institutions will meaningfully integrate the inputs that they may receive through such mechanisms into their existing processes. For example, even if the IGF were to establish an interface with a body such as the International Telecommunications Union (ITU), and develop a recommendation on an emerging internet issue that the ITU could play a part in implementing, the ITU has no procedures in place to accept that recommendation or to act upon it. At the same time, the ITU does not allow all stakeholders to participate in its work on an equal footing, even if those stakeholders had the resources and capacity to do so. This is where paragraphs 72(f) and (i) of the IGF's mandate play a part, as they aim to ensure that all other internet governance institutions and processes – not just the IGF itself – also comply with the WSIS process criteria of being multilateral, transparent, democratic and inclusive,[12] and, in particular, that they facilitate the engagement of stakeholders from developing countries.

The IGF's Delivery of This Vision

This leads very naturally to the question, has the IGF taken advantage of the latent potential that its mandate offers it? In short, it has not. From the outset, the IGF's mandate has always been interpreted in a very restrictive manner by an over-large and, until recently, rather stagnant Multi-stakeholder Advisory Group (MAG) dominated by stakeholders who do not require the IGF to meet the same needs that civil society does, and who in some cases may have regarded the IGF as a threat. The MAG, in turn, was led by a Chair and assisted by a Secretariat who could fairly be said to be more deferential to governmental sensitivities than to those of civil society (and naturally so, since they are staff of the United Nations after all).

12 WSIS, "Tunis Agenda for the Information Society," para 29.

This led to a now very firmly embedded culture whereby the IGF's leadership firmly resists innovation, and is inclined to compromise and back down in the face of reservations about proposed changes that are expressed from any quarter. Since 2006, the evolution of the IGF's structures and procedures to allow it to fully carry out its mandate has been so incremental as to be positively glacial, and even as tumultuous events take place in the landscape around the IGF (some of these referred to below), it remains far from certain that these will be effective to rouse the IGF from its self-imposed state of lethargy.

Examples of this abound, and to avoid simply offering a grab-bag of these, only four will be given here, roughly corresponding to the areas identified as gaps above. These are not exclusive, and in particular, do not cover issues such as funding mechanisms, which have also widely been recognized as an important gap, but which are well covered elsewhere in this volume.[13]

Coordination

Before the IGF's mandate was last renewed in 2010, a formal enquiry was held as to the desirability of its renewal. Sixty-eight percent of respondents expressed the opinion that the IGF's renewal should be conditioned on it adopting improvements to its format, function and operations. According to the UN Secretary General's notes of that enquiry, among "the most significant concerns expressed by stakeholders" was that "the Forum had not provided concrete advice to intergovernmental bodies and other entities involved in Internet governance," and that as a result, "the contribution of the Forum to public policymaking is difficult to assess and appears to be weak."[14]

In response, a multistakeholder working group of its Commission on Science and Technology for Development (CSTD) was established to consider possible improvements to the IGF, and the report of that working group was eventually delivered in March 2012. Its first recommendation was that the IGF should "develop more tangible outputs," and it went on to explain how the IGF could begin to do this:

> To focus discussions, the preparation process of each IGF should formulate a set of policy questions to be considered at the IGF, as part of the overall discussion. The results of the debates on these questions, with special focus on public pol-

13 ECOSOC, "Report of the Working Group on Improvements to the Internet Governance Forum," 2012, 4-7.

14 United Nations Secretary-General, "Continuation of the Internet Governance Forum," 2010, http://unpan1.un.org/intradoc/groups/public/documents/un/unpan039400.pdf, 5, 9.

icy perspectives and aimed at capacity-building, should be stated in the outcome documentation.[15]

This recommendation was implemented by a very peculiar method. A notice was posted on the IGF's website calling for suggestions from stakeholders on policy questions that could be covered at the next IGF meeting in Bali.[16] All 49 of the suggestions that were received by the stated deadline were then simply passed on to session organizers with a note saying "the following questions were received by the Secretariat and the IGF discussions should seek to address them as time permits."[17] Needless to say, this did not result in any tangible outputs being received from the IGF by any other internet governance institutions, yet for the 2014 meeting the same exercise has been repeated.[18]

Discussion

As to the discussion of emerging issues, surprisingly, while the IGF is thought of as a forum where anything can be discussed, this is not the case. The first evidence of this was the exclusion of the topic of "critical Internet resources" from the agenda of the IGF's first meeting on the grounds that it was deemed too controversial for inclusion. This was so baldly at odds with the paragraph of the IGF's mandate that explicitly called upon it to discuss such issues[19] that stakeholders were able to succeed in having this omission rectified for the IGF's second meeting.[20] Yet the same mistake was made again during a February 2007 open consultation meeting at which the then MAG Chair purported to issue a moratorium on the discussion of the issue of "enhanced cooperation" at the IGF – which was finally overturned at the 2008 Hyderabad meeting, following further dissent from stakeholders who considered the IGF an eminently suitable venue for the discussion of that topic, controversial or not.[21] Similarly, there have been several upsets involving the UN Secretariat removing printed material and posters deemed excessively critical of particular governments, yet until 2014, there was no written policy to explain the standards that were being enforced.[22]

Documentation

The IGF's failure to address discrete policy questions that could form useful inputs into other internet governance processes has already been observed. The ability to include written recommendations is an important way of addressing this deficit.

To this end, one key such reform for which various civil society groups and networks have been continuously advocating since 2006[23] is the establishment of working groups (or the reconstitution of dynamic coalitions, which emerged as a weak substitute for the same) that would be formally linked with the IGF and could work intersessionally to produce draft outputs that could be considered by the IGF in plenary session at its annual meeting. But alongside this, and equally important, would be reforms to those plenary sessions, to give them the capacity to consider inputs by such working groups, in order that if a rough consensus were developed around them, they might become a non-binding recommendations of the IGF.[24]

Proposals for session formats that could, indeed, lend themselves to that function – such as the (progressively less ambitious) speed dialogues that were proposed for the second meeting in Rio de Janeiro, moderated debates for the third meeting in Hyderabad, and roundtable sessions for the fourth in Sharm el Sheikh – were in each case cancelled by the MAG before the meeting in question took place.[25]

Participation

The IGF's mandate to strengthen and enhance the engagement of stakeholders in other internet governance mechanisms has been partially implemented, to the extent of allowing other institutions to hold open forum events at the IGF. But there has been no ongoing assessment of their embodiment of the WSIS process principles, as paragraph 72(i) requires.

15 ECOSOC, "Report of the Working Group on Improvements to the Internet Governance Forum," 4.
16 Internet Governance Forum, "Public Input – Shaping the discussions," http://www.intgovforum.org/cms/index.php?option=com_content&view=article&id=1353&Itemid=442.
17 Internet Governance Forum, "Policy Questions to be addressed by the 2013 IGF," http://www.intgovforum.org/cms/images/Policy%20Questions%20to%20be%20addressed%20by%20the%202013%20IGF.pdf.
18 Internet Governance Forum. "Call for Public Input – Contribute Policy Questions," http://www.intgovforum.org/cms/1885-call-for-public-input.
19 WSIS, "Tunis Agenda for the Information Society," para 72(j).
20 Jeremy Malcolm, *Multi-Stakeholder Governance and the Internet Governance Forum* (Perth: Terminus Press, 2008), 386.
21 Jeremy Malcolm, "Arresting the Decline of Multi-Stakeholderism in Internet Governance," in *Consumers in the Information Society: Access, Fairness and Representation*, ed. Jeremy Malcolm (Kuala Lumpur: Consumers International, 2012), 166.
22 Since then, the standards offered by the Secretariat are found at http://www.intgovforum.org/cms/frequently-asked-questions-2014?tag=Distribution%20of%20Materials.
23 MMWG, "Internet Governance Forum Input Statement," 2006, http://www.intgovforum.org/contributions/Internet%20Governance%20Forum%20Input%20Statement1.pdf.
24 Malcolm, *Multi-Stakeholder Governance and the Internet Governance Forum*, 444-449.
25 Jeremy Malcolm, "One step forward, two steps back," 2009, http://igfwatch.org/disc ussion-board/one-step-forward-two-steps-back.

In any case, before the IGF might monitor and assess the performance of other institutions in the internet governance regime, it should ensure that its own structures and processes fully embody the WSIS process principles. As this would require the IGF to be multilateral, transparent, democratic and inclusive, it might be considered incongruous that the stakeholder representatives in the IGF MAG are still not selected directly by their stakeholder groups. Instead these representatives are selected by the UN Secretariat in what has been described as a "black box" process, whereby nominations from civil society groups are invited, and these are assessed by unknown persons against a set of criteria that has never been made public. While it is suggested that one of the criteria would see one third of the MAG rotating out of office each year,[26] nonetheless until the most recent MAG appointments in 2014, there were still representatives who had not rotated off the MAG since their initial appointment in 2006. Meanwhile, civil society representatives who enjoyed wide support within their constituencies, and who had been nominated year after year, were still being refused a position on the MAG for reasons that remain obscure.[27] The CSTD Working Group on IGF Improvements discussed this issue also, and recommended that "process of selection of MAG members should be inclusive, predictable, transparent and fully documented," though it did not go so far as to remove the UN Secretariat from the role of making the final selection.[28]

The sum of the above shortcomings, and others, is that for those within civil society who expected that the IGF might help them gain a firmer foothold in internet-related public policy development, rather than simply being a conference for the exchange of views and information, the IGF has been rather a disappointment.[29]

26 Internet Governance Forum. "MAG Renewal 2014," http://www.intgovforum.org/cms/125-igf-2014/preparatory-process/1459-mag-renewal-2014.

27 In conversation with the author, one governmental MAG member remarked that to her knowledge, no government that wished to participate in the MAG had ever had its representative refused, and she was surprised that civil society's experience was any different.

28 ECOSOC, "Report of the Working Group on Improvements to the Internet Governance Forum," 5.

29 A Turkish civil society organization, the Alternative Informatics Association, will be hosting an "Internet Ungovernance Forum" alongside the 2014 IGF on September 4-5. In announcing this, they explained, speaking of the IGF, "It is highly probable that this meeting will be a sterile and 'good' forum where corporations, governments, and other organizations will only talk again without any concrete actions or decisions. For this reason, we will organize an alternative forum during this event." See: https://iuf.alternatifbilisim.org/.

Impetus for change

If the IGF needed shaking up, the CSTD Working Group on IGF Improvements was evidently not sufficient for the task – given that few of its recommendations have yet been implemented. However, pressure for change has continued from other quarters, including most notably the NETmundial Global Meeting on the Future of Internet Governance, held on 23-24 April 2014. Inconveniently, for those resisting change to the IGF (and notwithstanding that it, too, was imperfectly executed), the NETmundial meeting showed just how easily and quickly some of the reforms for which civil society had been advocating for could in fact be implemented.

Additionally, a range of other policy bodies, fora, and think tanks have emerged either themselves assuming some of the functions that the IGF has let languish, or else recommending that the IGF should step up to the plate and deliver according to its mandate. Returning to the four classes of gaps that were identified above as unfilled by the IGF, these external initiatives and recommendations include the following:

Coordination

The European Commission's proposed Global Internet Policy Observatory (GIPO) is self-described as a "clearinghouse for monitoring Internet policy, regulatory and technological developments" that would "increase expertise and understanding among all actors, including countries, NGOs and interest groups which may have so far been marginalized in Internet debates and decisions."[30] While disclaiming any attempt to duplicate the IGF, these are functions that lay within the IGF's original mandate that it has failed to satisfactorily execute.

Similarly, the NETmundial Multistakeholder Statement notes that "Internet governance discussions would benefit from improved communication and coordination between technical and non-technical communities, providing a better understanding about the policy implications in technical decisions and technical implications in policy decision-making,"[31] and recommends that "Periodic reports, formal liaisons and timely feedbacks are examples of mechanisms that could be implemented to that end."[32]

30 European Commission. "Commission plans guide through global internet policy labyrinth," http://ec.europa.eu/digital-agenda/en/news/commission-plans-guide-through-global-internet-policy-labyrinth.

31 NETmundia. "NETmundial Multistakeholder Statement," Paragraph 2.I.8, http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf.

32 Ibid, paragraph 2.II.4.

Discussion

While the IGF was never intended or expected to hold a monopoly on multistakeholder discussions of internet policy issues, nonetheless it is telling that newer bodies such as the Conference on Cyberspace (specializing in security issues),[33] the Stockholm Internet Forum[34] and the Freedom Online Coalition[35] (both on internet freedom) have discerned a sufficient lacuna in what the IGF offers that these separate initiatives were warranted.

In parallel, there are other institutions and processes that have called on the IGF to take certain discussions forward. One of these is the ITU, which held its World Telecommunication/ICT Policy Forum (WTPF) in 2013, and ran out of time to finish deliberating upon a proposed opinion tabled by Brazil, whereupon the IGF was suggested as a venue to continue the deliberations. Although a civil society coalition presciently suggested a NETmundial-like process by which this could occur, the suggestion was not taken up.[36]

Similarly, NETmundial itself suggested that the IGF would be an appropriate venue for ongoing discussions of net neutrality,[37] and such discussions are indeed scheduled for a main session at the 2014 IGF meeting, but are yet to be held at press date. It also recommended, more generally, "The IGF should adopt mechanisms to promote worldwide discussions between meetings through intersessional dialogues."[38]

Documentation

Apologists for the IGF's failure to produce non-binding soft law outcomes have long declared that by reason of the IGF's open composition, such a feat would be impossible.[39] NETmundial comprehensively demonstrated otherwise, by concluding a comprehensive set of recommendations using a participatory rough consensus process, in a short period of time, utilizing online and offline contributions and a fairly loosely constituted structure of multistakeholder committees. NETmundial also suggested that the IGF could improve its own outcome orientation, stating "Improvements can be implemented including creative ways of providing outcomes/recommendations and the analysis of policy options."[40]

A report to the French Senate issued this July takes note of this embarrassment and proposes a decisive yet perilous response: to augment the IGF with a new intergovernmental council that would presumably be less averse to making recommendations, while leveraging the existing legitimacy that the IGF draws from its UN character and its multistakeholder composition.[41] Meanwhile the NETmundial recommendations have already begun to influence other processes – exactly what civil society activists had long hoped that recommendations emanating from the IGF would be able to do.[42]

Participation

The NETmundial Multistakeholder Statement recognizes the long-held civil society position that stakeholders should select their own representatives to internet governance processes such as, implicitly, the IGF's MAG,[43] and also affirms that "All of the organizations with responsibilities in the internet governance ecosystem should develop and implement principles for transparency, accountability and inclusiveness,"[44] but without referring to the IGF's existing mandate to assess such implementation.

How has the IGF responded to these challenges? Perhaps most notably, it has established for the 2014 meeting a series of Best Practice Forums on a set of five defined topics, together with associated electronic mailing lists, discussion boards and web conferences.[45] A summary booklet on each Best Practice session is one of the intended outcomes to be published after

33 Government of the Netherlands. "Netherlands to host international Cyberspace Conference in 2015," http://www.government.nl/news/2013/10/18/netherlands-to-host-international-cyberspace-conference-in-2015.html.
34 Stockholm Internet Forum, http://www.stockholminternetforum.se/.
35 Freedom Online, http://www.freedomonline.ee/.
36 Best Bits. "Proposal for a mutl-stakeholder opinion on operationalizing the role of Government in the multi-stakeholder framework for Internet Governance," http://bestbits.net/igf-opinions/.
37 NETmundial Multistakeholder Statement, paragraph 2.IV.
38 NETmundial Multistakeholder Statement, paragraph 2.II.3(d).
39 Malcolm, *Multi-Stakeholder Governance and the Internet Governance Forum*, 423-424.
40 NETmundial Multistakeholder Statement, paragraph 2.II.3.(a).
41 Catherine Morin-Desailly, "Rapport d'information fait au nom de la MCI sur la gouver-nance mondiale de l'Internet," 2014, http://www.senat.fr/notice-rapport/2013/r13-696- 1-notice.html.
42 For example, UN Human Rights Council resolution A/HRC/RES/26/13 which takes note "of the Global Multi-stakeholder Meeting on the Future of the Internet Governance, held in São Paulo on 23 and 24 April 2014, which acknowledged, inter alia, the need for human rights to underpin internet governance and that rights that people have offline must also be protected online" : see http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G14/059/67/PDF/G1405967.pdf?OpenElement. Another example is the report of the Panel on Global Internet Cooperation and Governance Mechanisms at http://internetgovernancepanel.org.
43 NETmundial Multistakeholder Statement, paragraph 2.I.3.
44 NETmundial Multistakeholder Statement, paragraph 2.II.1.
45 Internet Governance Forum. "Best Practice Forums – Open Call to join IGF Best Practice Forums Preparatory Process," http://www.intgovforum.org/cms/open-call-to-join-igf-best-practices-forums-preparatory-process.

the IGF 2014 meeting. Although the same will not constitute recommendations of the IGF, they can be seen as an attempt to produce more concrete, easily communicable outcomes from IGF discussions.

Additionally the IGF has instituted a number of basic improvements to its online presence, including – bizarrely for the first time, despite many earlier suggestions – an opt-in mailing list for all those who register to attend the 2014 IGF meeting, and a calendar of events in an open format that can be accessed using calendaring software. Although such a calendar (amongst other functions such as blogs, wiki, feed aggregator and chat) had also been made available from 2007 to 2013 on the independent IGF Community Site, the IGF Secretariat has generally spurned such offers of community support, preferring to keep its web presence closed and refusing to offer access to its data or to offer reciprocal links.[46]

As the end of the second term of the IGF's mandate draws near, are these modest changes too little, too late? Perhaps a sign is found in the approach of the current MAG chair, Jānis Kārkliņš, to the observed shortcomings of the IGF described here. In a call for submissions in advance of the Istanbul IGF, he describes how "some sceptics of the IGF have suggested that no actions have been taken and that no decisions are made at the IGF – that it is just a "talk shop." He aims to "dissipate those doubts" by scouting for evidence "about concrete decisions or actions that have been taken as a result of engagement during the current mandate of the IGF."[47] Does this approach, essentially a public relations exercise, do justice to the criticisms made of the IGF, or can it rather be seen as trivializing them?

Outcome-Driven Reform for the IGF

By now the IGF has become well and truly ossified in roughly the same format that it took nine years ago – before the Snowden leaks, before the Anti-Counterfeiting Trade Agreement (ACTA) or the Stop Online Piracy Act (SOPA), before the Arab Spring and its aftermath, even, surprising as it may seem, before Twitter. Today, civil society needs the IGF more than ever before – but it doesn't need the IGF that we have; it needs the IGF that we were promised.

The MAG has proved that it will not drive the IGF's reform. Structurally moribund, it is far too large, contains too many underqualified and inactive members in the name of diversity and inclusiveness, and has no shared vision for the IGF. Although the Tunis Agenda says nothing of the MAG's duties or powers, a majority of its members take the view that it is, and should remain, nothing but a programme committee for the IGF's annual meeting. This presupposes such basic tenets as that the IGF should even *be* primarily an annual meeting – tenets that ought to be open to question.

If not the MAG, then will the UN Secretariat facilitate the transformation of the IGF into a body that fulfils the promise that WGIG foretold? Clearly not. Even granted the limited resources to which the Secretariat has access, it has placed many roadblocks in the path of the community members, from within and outside the MAG, who have attempted to ameliorate the IGF's shortcomings, for example, by improving its dismal web presence, or streamlining the process by which donations can be received.[48]

How, then, will the IGF's reform be effectuated? The solution lies in the fact that we are presently at a very key moment for the IGF and the broader internet governance ecosystem. On 16 September this year, during the 69th Session of the UN General Assembly and shortly following the IGF's ninth meeting in Istanbul, member states will decide whether or not to renew the IGF's mandate for another 5 years. With rather impeccable timing, the previous day is the deadline for a draft evaluation report on the IGF that has been commissioned by the UN from an independent consultant.[49]

If the IGF is to be reformed, it will only be if sufficient pressure is applied through these external channels. Concerned stakeholders from civil society – and without the intermediation of the MAG – need to reach out to the evaluator[50] and to their representatives at the United Nations, to explain why and how the IGF should be reformed if its mandate is to be renewed.

46 The successor to the IGF Community Site, Friends of the IGF at http://www.friendsoftheigf.org/ has reportedly also struggled to obtain access to IGF data. For full disclosure, the IGF Community Site was principally maintained by the author, though he has no direct involvement with Friends of the IGF.

47 Internet Governance Forum. "Call for Information," http://www.intgovforum.org/cms/125-igf-2014/preparatory-process/1621-call-for-information.

48 After years of inaction by the UN Secretariat, this July the Internet Society took matters into its own hands by establishing an independent foundation to receive funding for the IGF: see http://www.internetsociety.org/news/internet-society-establish-association-support-internet-governance-forum.

49 See http://workspace.unpan.org/sites/Internet/Documents/UNPAN92733.pdf.

50 For your convenient reference – since this fact is not disclosed anywhere on the IGF website – it is Edward M. Roche, and his contact details are easily found through a Web search.

This paper takes the normative position that it would be useful to adjust the balance of power in global internet public policy development, currently dominated by industry lobbyists and by governments who have been captured by powerful interest groups, so as to relatively amplify the voices of less powerful civil society stakeholders. If that position is accepted, then the outcomes required to strengthen the IGF along these lines flow accordingly. They may include:

Coordination

In cases where a process or institution external to the IGF exists to deal with a given global internet-related public policy issue, the IGF should provide a coordinating mechanism to direct stakeholders towards it. But more than just signposting is required in order to fulfil the IGF's mandate to "strengthen and enhance" the engagement of stakeholders in other bodies. It will frequently also be necessary to actively facilitate the engagement of stakeholders, particularly those from developing countries. This will range from capacity building, through to the collection, synthesis and delivery of messages from IGF stakeholders who are unable to participate directly. The latter is especially important in the case where the stakeholders' incapacity to participate is because the external institution does not comply with the process criteria of multistakeholder participation, transparency and inclusion (see below under "Participation").

Practically, this would typically involve the development of one or more messages from the IGF to the external institution (see below under "Documentation"), and for the establishment of a liaison function that would allow the IGF, as a proxy for its stakeholders, to deliver those messages to the target institution in whatever way effectively meshes with its own internal processes. The liaison function would also close the feedback loop, ensuring that the reception of the messages and any actions taken in response are effectively conveyed back to the IGF.

Discussion

In cases where there is a perceived need for the development of globally-coordinated internet-related public policy principles and where no suitable existing forum to develop these principles exists (in other words, for "orphan issues"), the IGF can provide a legitimate home for their discussion, and in appropriate cases where a consensus can be developed, for the development of standalone soft-law recommendations. There is no good reason why these discussions ought to be limited to a single annual meeting; rather, they should be carried out intersessionally, through a continuous process that offers online and offline users equivalent opportunities to participate. Rather than hoarding its information, the use of open data formats by the IGF would also help to facilitate broader public engagement and enrich discussions that currently take place within quite a narrow community of interest. The experiment of the NETmundial meeting offers some useful lessons for the IGF in this regard.

Documentation

To be useful to external institutions and to the broader public, the lessons learned and agreements reached at the IGF must be distilled into the form of short written messages. These may include recommendations where appropriate, such as the high-level principles that were agreed to at NETmundial. In order to produce such outputs, supportive structures and processes for the IGF must be crafted accordingly. To preserve the grassroots character of the IGF, it should be possible for proposals for outputs to be initiated from a range of sources, including workshops, self-organized dynamic coalitions, formally-appointed working groups, and even bodies external to the IGF, though only proposals that had gone through an inclusive, multistakeholder process would be eligible for consideration by the IGF as a plenary body, if the group that initiated the proposal choose to proceed down that route.

The benefit in having a message or recommendation issued by the IGF as a whole is that considerable moral weight could attach to the fact that it had been considered by a large and inclusive global community of stakeholders, and has reached a rough consensus. To get to that point requires a well-designed procedure, one possible example of which was given in the "IGF multi-stakeholder opinions" proposal cited above.[51] But aside from certain essential elements – such as balanced briefing materials, and strong facilitation that compensates for power imbalances – many other variants of democratic deliberation could work just as well. There has not however yet been an IGF main session that reached this standard; they have been treated just like large workshops (and even scheduled to overlap with smaller ones), so that the IGF community has never had the opportunity to deliberate as a plenary body. The third and final step in finalizing a message or recommendation from the IGF requires an assessment of whether a proposal has reached consensus, perhaps along with wordsmithing of a final text.[52] In practical

51 "Proposal for multi-stakeholder opinion." BestBits.net. http://bestbits.net/igf-opinions/

52 For those for whom the IETF (Internet Engineering Task Force) serves as a comforting analogy, the initiation of a proposed recommendation at the IGF would follow a similar course to the development of a proposal at a BOF (Birds of a Feather meeting) and thence a Working Group of the IETF ;

terms this task requires a much smaller, yet also multistakeholder group – perhaps an evolved version of the MAG, though given the observed problems of that group, the task would be more appropriately given to a new body within the IGF, such as what I have described as a Multistakeholder Internet Policy Council.[53] To ensure buy-in from all stakeholders (and recognizing that the IGF would only have soft power anyway, which powerful stakeholders could override at will), each stakeholder group within this council would have to approve a recommendation from the IGF in order to formalize it. If that standard cannot be reached, then the subject matter of the recommendation is perhaps not suitable for reaching such a broad multistakeholder consensus, and instead should be promulgated through a narrower group or by other mechanisms.

Participation

As described above, the IGF's coordination role aims to provide a stop-gap means of allowing stakeholders to participate in internet-related public policy development, even if the other institutions with authority in those areas do not yet allow for such participation directly. But in the longer term, part of the IGF's mission is to act as a neutral body to promote and assess the compliance of other internet governance institutions with the WSIS process criteria[54] – or perhaps in a slight gloss upon the IGF's mandate, with the NETmundial internet governance process principles – in order to bring them up to that common standard.

This does not mean that every institution must become a mirror image of the IGF itself. Since the concept of fixed roles for stakeholder groups was debunked at NETmundial, the multistakeholder coordination process should include an analysis of what are the appropriate stakeholder groups to take responsibility for a given issue, and what are the appropriate roles of those stakeholder groups in dealing with that issue. In some cases this might mean that even an intergovernmental body – say, in the area of state security – may still comply with the process principles even if other stakeholder groups are limited to a consultative role. In other issue areas – intellectual property enforcement, perhaps – it may be that full equality between the stakeholder groups is a more reasonable standard. Since this assessment will be a vexed political process, it is also important for it, like the conclusion of messages from the IGF, to be conducted on a multistakeholder basis and actively facilitated.

Conclusion

The IGF as it exists today is essentially just an annual internet conference, not dissimilar from many others, where stakeholders can exchange information and best practices. This is a valuable function, but hardly a unique one. In contrast, there are other elements of the IGF's mandate, summarized under the four headings given above, for which there are no contenders elsewhere in the internet governance regime – or, for the most part, in any other regime of global governance. This may account, in part, for the IGF's reluctance to embrace these untested paragraphs of its mandate.

Yet for civil society, it is these forgotten paragraphs that could make the biggest difference. Internet-related public policy questions that are today decided through the uncoordinated actions of large companies and the governments they lobby are frequently poorly thought out, overreaching, and human rights-infringing. By contributing its evidence-based, globally-networked, human rights centered and public interest oriented perspective, organized civil society could improve the effectiveness and fairness of internet-related laws and policies globally.

The IGF could help to make this happen if it provided a forum to work towards the achievement of a rough consensus on disputed policy issues through multistakeholder deliberation, and actively facilitated the transmission of the outcomes of these deliberations into diverse policy processes. The mandate for the IGF to do this exists now, and the structures and processes for it to do so are relatively easily implemented, as NETmundial served to illustrate. But after nine years of waiting and hoping, will the required reforms finally be put in place over the term of the IGF's next mandate… or will the forum be remembered as a missed opportunity?

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its discussion by the plenary body is akin to the circulation of an Internet Draft for comment within the full membership of the IGF ; and its formalization by an executive body such as the MAG is like the approval of a Proposed Standard by the IESG (Internet Engineering Steering Group).

53 Jeremy Malcolm, "My proposal to the CSTD Working Group on Enhanced Cooperation," 2013, http://igfwatch.org/discussion-board/one-step-forward-two-steps-back.

54 WSIS, "Tunis Agenda for the Information Society," para 29.

Institutionalizing the Clearinghouse Function

William J. Drake and Lea Kaspar

The NETmundial Multistakeholder Statement includes the suggestion that, "It would be recommendable to analyze the option of creating Internet governance coordination tools to perform on-going monitoring, analysis, and information-sharing functions."[1] This provision elicited little comment during the online public consultation, the civil society coordination session held on the eve of the meeting, or the main sessions of the NETmundial itself. Perhaps this was because the statement seems anodyne and unremarkable, or because attention was fixed on designing the principles and pronouncing on matters like surveillance. Whatever the reasons, the lack of engagement was unfortunate because this is one of the provisions that could actually help to stimulate new and concrete measures to improve the global internet governance ecosystem. As such, it would have been useful to have had an inclusive initial discussion of the matter.

The notion that the ecosystem lacks sufficient mechanisms for the ongoing monitoring, analysis, and sharing of governance related information is hardly new. Civil society actors raised this concern a decade ago, during the first phase of the World Summit for the Information Society (WSIS) process, when people were trying to imagine ways to fill holes in the institutional architecture of the time—a discussion that fed into the proposal to create the Internet Governance Forum (IGF). But in the end, the idea drifted off the collective radar.

This situation may now be changing. There is renewed interest in establishing a mechanism, or mechanisms, to promote action-enabling information and knowledge management, and there are nascent proposals that could be resourced and acted upon. For example, the European Commission (EC) has sponsored a feasibility study for the construction of a Global Internet Policy Observatory (GIPO) that would employ so-called "big data" technologies to gather and serve policy relevant information.[2] In addition, the report of the Panel on Global Internet Cooperation and Governance Mechanisms suggests the need to develop new and strengthen existing mechanisms to, "encourage the development of sustainable, searchable databases and observatories so that existing processes and potential partners are more easily discoverable by those seeking to address a problem," and to "map issues to existing [distributed governance] groups and provide assistance in the implementation of existing [distributed governance] groups' solutions."[3] These ideas could be taken up in the context of the NETmundial Initiative.

Accordingly, this chapter sketches some initial considerations that could help render the somewhat abstract concepts in play more concrete and tractable. We outline a set of programmatic elements that could be addressed in a coordinated manner in order to help empower governments and stakeholders to pursue effective solutions to governance challenges arising at different levels of social organization, e.g. national, regional, or global.

What should we call this ensemble of activities? Labelling a subject facilitates its discussion, but none of the obvious choices seem satisfactory. The term "observatory" is sometimes employed, e.g. by the EC's GIPO project, but our concern is with more than observing. "Knowledge bank" is another term that has currency in global policy circles, but this too could be understood to refer to a passive repository rather than an active on-demand provider of analysis, relationship management, and so on. So for now we will use

1 The NETmundial Multistakeholder Statement, Sao Paulo, 24 April 2014, p. 10, para. 4, http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf.

2 The European Commission, "Feasibility Study on Using Automated Technologies to Support Policy-Making," 11 June 2014, available at, http://ec.europa.eu/digital-agenda/en/news/feasibility-study-using-automated-technologies-support-policy-making.

3 "Report by the Panel on Global Internet Cooperation and Governance Mechanisms," p. 23, available at http://internetgovernancepanel.org/sites/default/files/ipdf/XPL_ICAN1403_Internet%20Governance%20iPDF_06.pdf. William Drake served as an advisor to the panel.

another familiar term—the "clearinghouse" function. A clearinghouse connotes a third party that serves as a repository and connection facilitator where supply meets demand. The term seems to best encompass the range of program elements of interest here, although it does carry some semantic baggage from the world of finance and implementations in other global policy arenas, and it may not translate well across languages. Hence our use of the term is provisional, pending a better suggestion.

Why speak of institutionalizing the clearinghouse *function* rather than just "the clearinghouse"? Because there are various ways in which the function could be institutionally embodied and performed, so it is better at this stage to focus on what could be usefully done and remain open minded about exactly who might do it and where. Beginning from the latter issue could plunge the topic into the usual heated binary argument about the merits of creating new organizations and distract attention from the full consideration of new informational activities. A decade ago, when the Working Group on Internet Governance (WGIG) debated the possibility of institutionalizing new dialogue space, it began by discussing "the forum function" and only later came to the consensus view that this would best be embodied in an IGF. We adopt a similar stance here, and briefly take note of the pros and cons of different forms that could follow from the function.

The Challenge

As we have mentioned, the notion that the ecosystem lacks sufficient mechanisms for the ongoing monitoring, analysis, and sharing of governance-related information emerged during the first phase of the WSIS process. It was integrally related to an important conceptual shift that was underway at the time, namely the growing recognition that internet governance involved much more than the collective management of names, numbers, root servers and the like—the logical infrastructure that came to be known as "critical internet resources," in IGF-speak. This new understanding was subsequently embodied in the so-called "broad" working definition of internet governance first advanced in the WGIG Report and subsequently included in the Tunis Agenda: "Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet."[4] If internet governance included arrangements pertaining to not only the physical and logical infrastructures but also their use for information, communication and commerce, then the range of issues and institutions involved was extensive. How then could governments and stakeholders track and respond to all these developments, or assess their conformity with relevant international norms?

An initial idea was included in the civil society declaration adopted at the Geneva WSIS summit in December 2003. The declaration called for the establishment of an independent and truly multistakeholder observatory committee that would, inter alia, "map and track the most pressing current developments" in governance and "assess and solicit stakeholder input on the conformity of such decision-making with the stated objectives of the WSIS agenda…."[5] In March 2004, while considering the possibility of an IGF-like arrangement, one civil society participant suggested at the UN's Global Forum on Internet Governance in New York:

> But if agreement cannot be reached on a multistakeholder process to promote dialogue and consensus (embodied, as necessary, in soft law), there could be a more minimalist and presumably digestible alternative. This would be to create a multistakeholder mechanism restricted to the monitoring, analytical, and information-sharing functions. By tracking developments across the Internet governance terrain, drawing attention to gaps and generalizable lessons, and providing the sort of multi-perspective assessment that is often lacking in more narrowly mandated arrangements, such a mechanism could enrich the dialogue and provide helpful inputs into other processes tasked with actual decision making. It would be especially useful to non-dominant stakeholders like developing countries, CSOs, and SMEs that already have difficulties monitoring and assessing governance processes, but other stakeholders could find it to be value-adding as well. A small, nimble, and well-connected secretariat supported by virtual

4 "Report of the Working Group on Internet Governance," June 2005, http://www.wgig.org/docs/WGIGREPORT.pdf, p. 10. The definition was in important respects a game changer for the WSIS and helped to establish the rationale for an IGF in which the full range of governance issues could be addressed holistically. See, William J. Drake, "Conclusion: Why the WGIG Process Mattered," in, Drake, ed., *Reforming Internet Governance: Perspectives from the UN Working Group on Internet Governance* (New York: United Nations Information and Communication Technologies Task Force, 2005), pp. 249-265, available at www.wgig.org/docs/book/WGIG_book.pdf.

5 WSIS Civil Society Plenary, *"Shaping Information Societies for Human Needs,"* Civil Society Declaration to the World Summit on the Information Society, 8 December 2003, p. 22, available at, http://www.itu.int/wsis/docs/geneva/civil-society-declaration.pdf. This section of the declaration was drafted by William Drake and Wolfgang Kleinwächter.

networks of organizations and individuals could perform these tasks effectively.[6]

In its July 2005 response to the WGIG report's recommendation to create the IGF, the civil society Internet Governance Caucus argued that the IGF could perform, inter alia, the following functions:

- Systematic monitoring of trends;
- Comparative, cross-sectoral analysis of governance mechanisms, with an eye toward "lessons learned" and best practices that could inform individual and collective institutional improvements;
- Assessment of horizontal issues applicable to all arrangements, e.g. the promotion of transparency, accountability, inclusion, and other principles of "good governance";
- Identification of weaknesses and gaps in the governance architecture, i.e. "orphaned" or multidimensional issues that do not fall neatly within the ambit of any existing body;
- Identification of potential tensions between separately developed mechanisms, and possibly efforts to promote enhanced coordination among them[7]

In sum, these early formulations saw a need for the ongoing monitoring, aggregation, analysis and dissemination of information about internet governance decision-making; encouraged the identification of generalizable patterns and lessons learned via holistic and comparative assessments of institutions' performance; noted the possibility of gaps in the governance architecture and related "orphan issues;" considered that such information sharing would be of particular use to developing countries and other non-dominant actors; and maintained that these activities should be pursued in a non-negotiating organizational setting, whether the IGF or some small expert body, that could provide input to decision-making bodies.

The WGIG report suggested and the Tunis Agenda established a holistic mandate for the IGF that included the exchange of information and best practices, as well as the ongoing promotion and assessment of the WSIS principles' embodiment in internet governance processes. But there was no possibility of a political consensus to endow the forum with the sort of Secretariat capacities that would be needed to pursue or facilitate these or the other informational activities suggested above in a systematic manner. In the absence of further elaboration of the concept and champions among politically salient actors, the notion that some form of clearinghouse function might be institutionalized in the IGF or elsewhere drifted well off the governance agenda.

In the period since the IGF's launch in 2006, the global infosphere has grown exponentially. The array of information resources on internet governance issues and institutions is continuously expanding as new actors and voices engage, the policy challenges increase in number and complexity, and the internet touches ever more deeply on political, economic, and sociocultural concerns across all levels of social organization. We are quickly moving from an age of seeming scarcity to something like a massive "data commons" about internet governance.[8] Even for dedicated and experienced governance mavens, finding one's way through the resulting information overload in order to track developments of interest can be a daunting task. For newcomers to the field or people with other responsibilities that preclude living and breathing internet governance, the challenge is even greater and potentially vertigo-inducing. Relying on conventional search engines and pointers from colleagues, for example, to identify, organize and then assess and make use of the most relevant information on any given topic often does not suffice.

The challenge can be particularly daunting for governments and stakeholders from developing countries, especially the UN-recognized Least Developed Countries (LDCs). An LDC minister or her subordinates who are seeking to engage effectively in global governance arrangements, or who are seeking solutions to spam, network security or a host of other issues on which sufficient domestic institutional capacity is lacking, may be hard pressed to gather the information or construct the relationships with sources of expertise that would be needed. For them and many other users, ploughing through endless blogposts, press stories, organizational reports, scholarly papers and the like could fail to yield a clear direction on policy choices and result in nothing more than being confused at a higher level of complexity.

Such concerns have helped to fuel the calls over

6 This presentation was expanded and published as, William J. Drake, "Reframing Internet Governance Discourse: Fifteen Baseline Propositions," in, Don MacLean, ed., *Internet Governance: A Grand Collaboration* (New York: United Nations Information and Communication Technology Taskforce, 2004), p. 158, available at, http://tinyurl.com/wjdrake-reframing-2004.

7 GLOCOM on behalf of the WSIS Civil Society Internet Governance Caucus, "Initial Reactions to the WGIG Report, 19 July 2005," Document WSIS-II/PC-3/CONTR/23-E, 1 August 2005, at, www.itu.int/wsis/docs2/pc3/contributions/co23.doc, p. 10.

8 The term is from, World Economic Forum, *Big Data, Big Impact: New Possibilities for International Development* (Geneva: WEF, 2012), available at, http://www.weforum.org/reports/big-data-big-impact-new-possibilities-international-development.

the past decade for intergovernmental organizations (IGOs) to play a much greater role in internet governance. Of course, the push during the first phase of WSIS by many members of the Group of 77 (G-77) for the International Telecommunication Union (ITU) to take over functions performed by the US government and the Internet Corporation for Assigned Names and Numbers (ICANN), and subsequently for the creation of a new UN-based entity such as India's proposed Committee for Internet-Related Policies were not merely about problems of knowledge and relationship management. Questions of political power, preferred models of state-society relations and governance were obviously driving forces. Nevertheless, some G-77 members have often argued that they cannot adequately discharge their public policy responsibilities unless intergovernmental bodies offer the sort of on-demand and routine access to knowledge and expertise that they provide in other global policy arenas.

This argument especially has been made with regard to so-called "orphan issues" that do wholly fall under existing intergovernmental mandates. Which issues actually are "orphans" and fall into gaps in the governance architecture has been the subject of long-running dispute. As Samantha Dickinson recounts in her chapter in this volume, the UN's Working Group on Enhanced Cooperation (WGEC) established a Correspondence Group in which she and Lea Kaspar volunteered to aggregate issues identified by members in order to arrive at an evidence-based consensus identifying such gaps. While the WGEC was unable to complete this work, it is hoped that UN staff will bring it to fruition.

In the meantime, consider an example that is often cited as an orphan issue: network security. While there is no UN agency with a comprehensive mandate to manage infrastructure security, there are in fact a plethora of governance activities underway in technical and policy bodies at the national, regional and global levels. While these may not provide solutions to every issue, they do effectively address many of them. But it may not be easy for a government or stakeholder to access, assess and compare all these activities, or to construct a network of relationships that would facilitate the development of viable solutions. This is where a coordinated clearinghouse function could help.

Possible Elements

How would one perform holistic, on-going monitoring and analysis of governance issues, policies and institutions? How could we organize and disseminate information and facilitate relationships in order to promote decision-making? In exploring these questions, it would be useful to consider not only the unique properties of the internet governance ecosystem, but also experiences with varyingly similar initiatives that have been undertaken in other complex global policy arenas, such as health and the environment, finance and development, and international peace and security. In these and other fields there have been experiments with innovative technological and analytical tools and organizational models, including crowdsourcing, expert networking, and the use of open data.

The following presents a set of elements that could collectively constitute a clearinghouse function, drawing in particular on experiences in the climate change arena. Although nominally somewhat modular, they would probably best be developed or addressed in an integrated manner due to their various interdependencies.

Human/Machine Balance. A meta-design question that informs all aspects of such projects is the balance between human intervention and machine processing. The most familiar approach of course relies on analysts for the collection, classification, storage, and analysis of content, but new projects like the EC's GIPO proposal opt instead for the automation of such tasks. A priori, one would think that a blended model would be more resource-intensive but also yield the greatest value with respect to analysis and relationship management. But there is plenty of room for experimentation with different approaches at many points along the continuum.

Definition of Scope. A foundational question to be tackled is the scope of the issues and institutions to be covered. If we take as a starting point the aforementioned "broad definition," the range and diversity of internet governance activities that could be covered is rather daunting. There are various solutions that could be considered to make the task more tractable. For example, one could imagine a clearinghouse function that is focused on one or a few bounded issue-areas; a specific level of social analysis (e.g. national, regional, or global); or a particular institutional form (e.g. multistakeholder or multilateral). In addition, these varying dimensions could be paired in different configurations, e.g. a focus on national-level approaches to privacy and data protection.

Clearly, the most demanding option would be to pursue an omnibus approach to the internet governance landscape. This would require fairly elaborate taxonomies and categories for gathering, organizing and cross-referencing information resources, and probably some prioritization of certain topics while also encom-

passing less systematic and structure resources on others. Many research programs and observatories on internet governance or other policy areas, such as international trade, foreground particular issues but also encompass items on other aspects of the field as opportunities and events warrant, and some cycle in and out lead topics over time. But the complexity of the challenges involved is substantial, as efforts elsewhere have demonstrated. For example, early in the field's development, several climate change groups raced to create the "one stop shop" for information only to find that they were too broadly framed to be really effective. An evolution ensued toward differentiated platforms filling specific niches for targeted audiences. Coordination, perhaps among federated platforms, could be a way to blend specialization with a holistic analytical overlay, although there is the associated risk that competition for resources and recognition and organizational turf considerations could detract from the effort.

User needs assessment. What is the nature of the demand, and the real and tangible governance problems in need of solutions? Requirements and constraints may vary considerably across governments and stakeholders, so it is imperative to "know thy user." Moreover, their needs may evolve, even in the course of a project, so the solutions offered must be flexible and adaptable to changing parameters or resources could be wasted. An agile approach would be needed to attain the holy grail of "disciplined execution along with continuous innovation."[9] Lessons could be drawn from policy arenas such as climate change, where experience demonstrated the benefits of building responsiveness to evolving user needs, tastes, and trends into projects. Drawing on user preferences, profiles, and past behavior to tailor content, as search engines do, might be helpful.[10]

Information identification, gathering, and verification. One challenge, especially given the potential broad scope of a holistic approach, would be to consolidate diverse data sources that may be neither compatible nor comparable. Data may be quantitative or qualitative, or variable in length and quality. This could pose a serious impediment when attempting to provide an integrated overview of any issue area. The technical challenges of aggregating and drawing on diverse sources could significantly impact the affect the scope, analysis and dissemination of information. In addition, decisions would be needed on data collection and management options such as levels of automation, verification modalities, frequency of updates, data collection tools, degree of user interaction, reliance on external and expert inputs, and the level and type of oversight. There also could be a need to generate original content, particularly where relevant information is not well documented and readily available.

Centralized vs. distributed information management. Across the various platforms and organizations in the climate change arena, the oversight function is often separated from the content management and creation function in order to optimize the activities. Many organizations have small management/oversight structures engaged in decision-making, development of the platform/portal, sourcing funding, and developing relationships. Content management and editorial oversight vary between a tight gatekeeper model and a more distributed model involving key partners. Although in some cases thematic streams are managed by groups specialized in the given theme, there is always an element of editorial oversight for quality control purposes.

Analysis of events and trends. If users are unable to link the information provided to real world needs, the preceding activities of collecting and organizing content would be useless. This activity would require, inter alia, accessing information about existing arrangements; identifying, observing and following trends; identifying issues and potential solutions; and mapping and visualizing information according to set criteria in order to yield fact-based, neutral, and well-structured content. Providing such services in an optimal manner would seem to require human expertise.

Descriptive statistics can be used to map and summarize certain types of information. Organizations such as the World Bank and the ITU provide good examples of how statistical resources can be employed to uncover trends across a wide variety of topics. These examples of wide-ranging, but relatively static, monitoring platforms should be explored alongside more narrow and dynamic services such as Scout,[11] which allows users to follow developments around specific pieces of national legislation in almost real time. With advancements in statistical modelling, users have an ever growing list of options at their disposal to describe the relationships between events and to predict future developments.

9 Steve Denning, "The Best-Kept Management Secret On The Planet: Agile, Forbes 9 April 2012, available at http://www.forbes.com/sites/stevedenning/2012/04/09/the-best-kept-management-secret-on-the-planet-agile/.

10 The lessons from climate change referenced here are based on interviews carried out by Rebecca Zausmer for Global Partners Digital with the convenors of knowledge-sharing platforms weADAPT and the Adaptation Learning Mechanism (ALM), and on research concerning other platforms and initiatives.

11 Scout. "About." https://scout.sunlightfoundation.com/about

The clearinghouse function also could provide a basis for comparative institutional assessments and the identification of good practices worth replicating. Users would need to be able to analyze the status of existing arrangements by employing reliable data and analytical tools and benchmarks. However, as demonstrated by the recent experience of the WGEC, devising broadly accepted benchmarks in the absence of agreed upon definitions or principles can be difficult. A way around this could be to look at how principles such as transparency, accountability, and inclusive participation are or are not operationalized in comparable domains of activity, rather than trying to establish firm benchmarks applicable across all governance arrangements. After all, the levels of openness or transparency in cybersecurity may need to be different from those in dealing with, for instance, child online protection.

Dissemination. Easy access, usability, and outreach efforts are equally important. Information must be presented in user-friendly and even customizable formats. In some cases, this could require a coordinated effort by data scientists, designers, topic experts and end users. Ideally, iterative feedback loops would be incorporated throughout the process of developing the appropriate user interface(s). Furthermore, it would be important that any technical or design elements take into account internet access constraints in developing countries, as well as the needs and requirements of poor and marginalized communities. One can imagine a wide variety of informational products using different media, from simple data sets to issue briefs, in-depth reports, and graphical and video representations to name a few.

Trust and buy-in. It would be imperative to work closely with partners, contributors and users in order to ensure sustainability. This is an important lesson from the experiences of the climate change knowledge sharing platforms weADAPT and the Adaptation Learning Mechanism (ALM). To get people to use and contribute, a sense of ownership is essential and an effective outreach strategy to the community of users is necessary. Of particular importance, given the often disputatious nature of the internet governance arena, are credibility and neutrality. As relevant, differing opinions and interpretations could be presented alongside each other in a fair manner with pointers to additional external resources supporting the respective positions.

Relationship Management. Sometimes it will be enough to simply provide users with information or analysis, and sometimes more will be needed in order to facilitate capacity development and decision-making. In the latter cases, a core element of the clearinghouse function could be to help users access existing or construct new transnational policy networks. For probably every internet governance issue there are experts and experienced practitioners scattered around the world and working in different organizational settings who would be willing to help governments and stakeholders forge locally relevant approaches to the challenges they face. Such distributed networks could be assembled on an ad hoc, temporary basis or as standing groups that are available as needed. These horizontal assemblages could complement more conventional sources of technical assistance and expertise, such as is provided by vertically organized consultancies, business associations, civil society groups, and multistakeholder and intergovernmental organizations. In parallel, a clearinghouse could assist users in constructing platforms for public input and contributions, promoting transparency and citizen inclusion.

Institutionalization Options

We turn now to the knotty question of how the function could be institutionalized as a standing component of the global internet governance ecosystem. Of course, if one is of the view that a convincing case for doing this has not been and cannot be made, then the following options will be of little interest. But if one believes that with proper elaboration there could be something here worth exploring further, the question of where the function might be housed inevitably must be addressed. We briefly outline five options:

Status Quo+. If the prospect of constructing a new organization cannot attract sufficient support, the global community could try to approximate the function by committing more resources to enabling groups that are already on the scene. Communities of expertise like the Internet Society, the Global Internet Governance Academic Network, and the new Network of Centres; capacity development programs such as the various schools of internet governance and the Diplo Foundation; organizations like the various technical community bodies, consultancies, think tanks, and academic research centres and observatories; civil society and private sector organizations and associations; national, regional and global technical assistance programs and development banks; dialogue forums like the national, regional and global IGFs—these and other entities could simply be encouraged to “step up their game” with respect to the kinds of information resources and relationships they already provide to varying degrees. This could be the path of least resistance, but there are reasons to wonder whether, absent some rather demanding coordination efforts, this would really come close to helping users like LDC

governments work their way through the cacophony to focused and locally viable decision-making.

Intergovernmental Organization. IGOs already provide some of the elements described above within the constraints of their respective mandates. Some would undoubtedly welcome the expanded mandates, resources and staffing that a systematically coordinated clearinghouse function would require. And for many G-77 governments, this could be the preferred solution that would inspire the highest level of trust and buy-in. But there would be some significant barriers to overcome with this option, e.g. a view of governments (or even particular government ministries) as their primary clientele; variable and sometimes poor relations with the nongovernmental actors that are often best positioned to provide certain kinds of information and expertise; commitments to suboptimal governance models; the possibility of politicization and bureaucratization unduly constraining the functions' performance; focused mandates that could not easily encompass many of the more pressing issues; and the political inability to facilitate cross-organizational assessments of governance performance.

A New Multistakeholder Organization. Over the years, when a functional need has been identified, the global internet community has proven able to create new and sustainable entities that operate in a fairly transparent, accountable and inclusive manner. It is easy to forget that not so long ago we did not have ICANN or all the Regional Internet Registries, internet service provider associations, network operator groups, internet exchanges, security entities, standards processes, root server operators and so on. Given this track record, one would think it possible to create a lean but expert organization that would complement and effectively interface with the others, as well as with potential users. Such an organization also could take on the role, addressed by Anriette Esterhuysen in her contribution to this volume, of providing models, good practices, lessons learned and so to help interested governments establish multistakeholder processes at the national or regional level.

The NETmundial Initiative could get the ball rolling. During the six month boot-up phase in which the World Economic Forum (WEF) will serve as the convening platform, a working group could be constituted to flesh out the concept and define a sustainable organizational model. Transparent and inclusive online consultations could be held to solicit input from diverse stakeholders and experts worldwide, and contacts could be initiated with potential users, such as developing country governments, to undertake a needs assessment. A global community of supporters could be constructed to guide the execution of the project after the WEF's convening role is concluded. And the WEF could use its 2015 annual meeting to bring together high level political and industry leaders and encourage commitments of financial and other support. The NETmundial Initiative's Steering Committee could oversee the project.

A major challenge here would be to obtain and sustain the buy-in of developing and transitional country governments that are not used to working in a multistakeholder setting and may be more strongly inclined toward an intergovernmental formulation. The sort of riotous debate and factionalism that sometimes mars multistakeholder processes ideally would be tempered somewhat to increase the comfort levels of governments and other potential partners who are not used to the culture. Even then, a historically nurtured and sometimes deeply embedded lack of trust in some quarters could pose a serious challenge unless forward-looking, first-moving client governments had good experiences and encouraged others to abandon their reluctance.

The IGF. A fourth option would be to return to the sort of vision civil society participants advanced a decade ago and perform the function within the IGF. This could entail developing an expert grouping within the secretariat that would engage in networked collaboration with people from the IGF community. There are arguably natural synergies between the dialogue and clearinghouse functions that could be exploited, e.g. by pairing face to face with online activities. As Wolfgang Kleinwächter has argued, "With regard to the clearinghouse function, the dialogue among various governmental and non-governmental organizations and institutions can clear the air with regard who has to do what. It could lead to a more enhanced and developed division of labour where institution can spin a web of interactions.…[12] Moreover, the IGF provides a pre-established global multistakeholder platform that could be rapidly leveraged to ramp up outreach and promote inclusion. And in at least some circles, it would provide greater legitimacy and continuity with prior long-running global processes.

On the other hand, the organizational culture, budgetary rules and political constraints of the United Nations could make it difficult to organize an innovative and independent activity with significant multistakeholder

12 Wolfgang Kleinwächter, "Multistakeholderism and the IGF: Laboratory, Clearinghouse, Watchdog," in, William J. Drake, ed., Internet Governance: Creating Opportunities for All---The Fourth Internet Governance Forum, Sharm el Sheikh, Egypt, 15-18 November 2009 (New York: The United Nations, 2010), p. 91.

participation. The IGF itself has already faced many challenges in this respect, and one would not want the project to become a political football or bargaining chip in the General Assembly, or to be interfered with in terms of staffing, project management, finances, etc. Moreover, if legitimacy and political support are thought to be an argument in favor of placing it under the IGF umbrella, it is worth bearing in mind that there are many G-77 governments that already choose not to engage seriously with the IGF.

Mixed. The final option would be to combine the last two models, by establishing an independent multistakeholder clearinghouse with its own financial supports and community control, but develop some sort of working relationship with the IGF. This might square the circle and provide the benefits of both approaches while attenuating their potential downsides. The modalities of cooperation would take some work to hammer out, but depending on various factors this could prove doable.

Conclusion

Our discussion clearly provides more questions than answers, and is intended only to be a suggestive appetizer. Further research and analysis will be needed to flesh out the concept in greater detail, including by drawing on similar endeavors in other global policy spaces. Also needed would be a focused and inclusive global dialogue about ways to improve the circulation of knowledge and information and the facilitation of policy networks in the global internet governance ecosystem. Whether the ensemble of activities here referred to as the clearinghouse function could help to provide a solution is a question that could be taken up in an expanded NETmundial Initiative and other venues. In the meantime, the authors of this chapter have organized a workshop on the subject to be held during the IGF at Istanbul in September 2014.[13] There a group of expert panellists will consider such questions as:

- Is the status quo sufficient, or is there a compelling case for institutionalizing the clearinghouse function in some manner?
- If one believes that in principal this is worth exploring, what elements of the function most need to be thought through and clarified in order to make it a viable project?
- How do we assess the relative costs and benefits of the five models above? Which ultimately seems like the most promising path forward? Or is there another, better model to consider?

13 Workshop 153, "Institutionalizing the Clearinghouse Function," Thursday, 4 September 2014, information available at, http://sched.co/1mJ0A2M. As with all IGF workshops, a transcript of the discussion will subsequently be available from the IGF website.

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Global Mechanisms to Strengthen Democratic Practices in National Multistakeholder Efforts

Anriette Esterhuysen

Taking the NETmundial statement as its starting point, this chapter unpacks the concept of multistakeholderism and explores the interrelationships between multistakeholder participation at global and national levels, with a view to identifying mechanisms that can strengthen and sustain multistakeholder internet policy-making where it matters most: the national level. Stronger and more sustained national level multistakeholder participation will, in turn, inform regional and global processes and help address the current gaps in participation and influence between stakeholder groups, and between people from developing and developed countries.

Unpacking the "Multistakeholder Approach" to Internet Governance

The idea that policy processes should be inclusive is not new. Devolution of power to the local level and public participation has been part of broader discussions on deepening democracy for a long time. What gives the notion of multistakeholder policy in the context of the internet an extra "edge" are six interlinked factors:

The internet is inherently 'multistakeholder.' The internet is not developed, controlled, or managed by any one stakeholder group and depends on both public and private investment and network and telecommunications infrastructure. The influence that different stakeholders have on the character of the internet changes over time as a result of wider changes in, among other things, modalities of access (for example, the change from fixed line to mobile access, or cloud-based services). While these changes do not make the internet any less multistakeholder, it affects the power, and interests of stakeholders in ways that should be addressed by internet governance and regulation.

The internet is a global public resource. In this author's view, the internet should be regulated as if it were a global public good.[1] What began as a seemingly elitist new way of communicating and sharing data developed mostly in US academic and military institutions has evolved into a truly global public resource. Governments around the world are increasingly concerned with being able to exercise control over the internet's use and governance.

Divides in power and influence continue to characterize internet development, use, and governance. In spite of its dynamism and increasing ubiquity, issues of power and control, and access and exclusion continue to present challenges which affect internet users and which play themselves out in internet policymaking. This relates in particular to the real and/or perceived dominance of the richer and more powerful parts of the world in developing and benefiting from the internet, as well as the emergence of large global internet companies and monopolies. The 'digital divide,' itself an extension of existing social divides in the offline world, produces vast differences in availability, quality, and affordability of access to the internet, among and within countries. Divides also exist in the internet's governance and development. Even when changes in this configuration of power take place, e.g. through the increasing influence of companies and platforms based in China, the general playing field is not leveling.

Internet users – and those not yet connected – matter. Unlike in, for example, traditional telephony, internet users are not mere consumers. They shape

1 While the internet does not meet conventional criteria for being a global public good, this does not prevent public policy and regulation from approaching the internet as an entity that has many of the qualities of a public good. It is worth noting that it is mostly the lack of effective public policy and regulation that prevents the internet from conforming to traditional definitions of a public good, such as being ubiquitous and universally available.

the internet, generate content, use it as a workplace, a social space, for learning and for political expression and participation. They are stakeholders in its governance, and they include people and institutions from across the world and multiple sectors. Moreover, the impact of the internet touches on so many aspects of daily life that those who do not yet have access have as much, if not more, at stake in its governance as those who use it on a daily basis. Those without access are doubly disempowered due to the conditions linked to their lack of access, such as their gender, class, social or geographic location, as well as by not having access to what has become a critical enabler of human rights and the primary medium for expression and participation.

Internet policy is not just about the internet. The internet does not exist in a parallel dimension. It is part of social, economic, cultural, personal and political life. Mapping of internet related public policy reveals a complex and vast ecosystem of issues, mechanisms for policy making, and forums for standards setting and dialogue.[2] From health, to education, to trade, to human rights, internet-related policy responses are taking place in all these spheres and more. Public policy issues that relate to the internet are not finite. They will emerge and change over time. Some will stand out as priorities at certain times, as does the protection of personal privacy at present. What is important to recognize is that these issues are so diverse, and require so many different areas of expertise that it would not be feasible to centralize decision-making about them. A common weakness among internet governance specialists from all stakeholder groups is that they see public policy through an internet lens, rather than internet governance through a public policy lens.

Global internet governance is not just about global issues. It is often not possible to make a clear 'global' vs 'national' demarcation among these issues. There is an unspoken, and often spoken, notion that 'national' issues do not belong in global governance discussions. Global multistakeholder internet governance insiders tend to underestimate the complexity, and importance, of the national space.[3] Many actively try to posit the global space as an alternative to the national. This is particularly convenient for multinational internet companies for whom the regulatory burden of having to comply with multiple national regimes would have a huge cost. The two levels, however, are fundamentally interlinked. Global policies on investment in infrastructure affect access availability at the local level. Enforcement of rules to prevent copying of content of text books or journals published in one country, affects access to knowledge of people living in many others. Most global internet governance spaces have tended to separate 'global' and 'local' in ways that have made participation for stakeholders from developing countries very challenging. The global level has been defined in ways that have been quite alienating to people who are trying to come to grips with internet governance. Put simply: they are made to feel that internet policy issues that matter to them are not important enough to be discussed at the global level. And, if they want to participate in global discussions, they are under pressure to show knowledge and interest in issues that are often quite remote to them, such as "the state of the IPV6 transition" or whether the IGF is, or is not, an example of "enhanced cooperation in internet governance."

These factors have contributed to a rather uncertain terrain – or internet governance ecosystem—made up of a mix of old and new institutions and of top-down and bottom-up processes. Participation in it is still relatively limited in terms of the number, range and diversity of people and institutions who are actively engaged. Yet it is a very contested space, particularly with regard to finding governance solutions that enable the internet's growth as a public resource, while also containing the power of governments (who often want to restrict content and monitor user behavior) and corporations (who usually prefer as little regulation as possible, or in the case of the traditional large rights holders, who would like to maximize enforcement of intellectual property rights) to influence its governance in ways that serve their own particular interests.

The application of the multistakeholder principle has tended to be quite simplistic, with stakeholders clustered into four or five groupings: governments, business, civil society, the technical community (with the academic community sometimes being clustered along with the technical community), and intergovernmental organizations. Internet users are either ignored, or seen to be represented by civil society, or, in some cases, represented through the rather vaguely defined device of 'at-large' internet user structures.

This simplistic application of the multistakeholder principle is a direct result of the absence of systematic acknowledgement of the differences in power,

2 David Souter, "Mapping internet rights and freedom of expression," *Global Information Society Watch 2011: Internet Rights and Democratization* (Goa: APC & Hivos, 2011), p. 55. http://www.giswatch.org/mapping-democracy/freedom-expression/mapping-internet-rights-and-freedom-expression.

3 A study by Souter and Kerretts on Kenya done for the Internet Society in May 2012 illustrates this complexity. "Internet Governance in Kenya – an Assessment," is available at http://www.internetsociety.org/sites/default/files/ISOC%20study%20of%20IG%20in%20Kenya%20-%20D%20Souter%20%26%20M%20Kerretts-Makau%20-%20final.pdf

capacities, and resources among various stakeholders. This points to the greatest democratic deficit in the multistakeholder approach in its current form: it has enabled well-resourced stakeholders to dominate policy spaces and to influence outcomes in service of their own interests, while leaving end-users largely ignored because those that represent their interests, civil society and at-large structures, are simply not powerful enough to compete with business and government.

Leveraging the NETmundial to Strengthen Democratic Multistakeholder Internet Governance

At the level of international agreements, the NETmundial statement constitutes the most coherent formal international endorsement of the multistakeholder approach since the World Summit on the Information Society. Building on more than a decade of debate and dialogue, particularly at global, regional and national Internet Governance Forums, the NETmundial statement and roadmap demonstrates the potential of the multistakeholder approach to internet governance while also recognizing the challenges it has to address to be effective, sustainable, democratic and, most of all, to serve the public interest.

The first principle in the NETmundial statement's section on Internet Governance Process Principles is "Multistakeholder." It states that:

> Internet governance should be built on democratic, multistakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the private sector, civil society, the technical community, the academic community and users. The respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion.

The multistakeholder approach is not an end in itself; it is a means to achieve the end of inclusive democratic internet governance. This implies that these processes need to be more than just 'multistakeholder:' they need to strive actively to be democratic, and consider stakeholders, and their roles and interests in a dynamic and flexible manner. Multistakeholderism is not a substitute for democracy. Mechanisms intended to strengthen the multistakeholder approach need to start from this premise and explore the relationship between the two.

They also need to consider the six factors identified above: that the internet is inherently 'multistakeholder' and a global public resource; that divides in power and influence continue to characterize internet development, use and governance; that internet users – and those who don't have access yet – matter; that internet policy is not just about the internet; and, global internet governance not just about global issues.

The above, together with the remaining principles for internet governance processes in the NETmundial statement, provide a checklist for deepening democratic practice in internet governance.[4] They should guide mechanisms to support multistakeholder processes at national levels.

Mechanisms to Support Democratic Multistakeholder Internet Governance

Both the NETmundial roadmap and the report of the Panel on Global Internet Cooperation and Governance Mechanisms[5] make proposals on how the multistakeholder model can be strengthened.[6] Recommendations have been made in other spaces as well, particularly at regional IGFs, but these are the two most recent.[7]

Below I propose seven types of mechanisms: 1) Mechanisms for sharing information and innovation; 2) for dialogue, networking and debate; 3) to provide normative frameworks and guiding principles; 4) for capacity building; 5) for research, monitoring and

4 The headings of these principles are: Open, participative, consensus driven governance; Transparent; Accountable; Inclusive and equitable; Distributed; Collaborative; Enabling meaningful participation. Read the full section on pages 6-7 of the *NETmundial Multistakeholder Statement* (São Paulo, April, 24th 2014) at http://netmundial.br/wp-content/uploads/2014/04/NETmundial-multi-stakeholder-Document.pdf. The document also references the importance of including women in internet governance processes.

5 The author of this chapter was a member of this panel. http://internetgovernancepanel.org/panel.

6 The NETmundial statement talks particularly of developing multistakeholder mechanisms at the national level and, at the global level, strengthening the Internet Governance Forum. The Panel identifies three types of enablers for a dynamically distributed and decentralized internet governance ecosystem: Forums and Dialogues; Expert Communities and Capacity Development and Toolkits. From the report of the panel released in May 2014 and available at http://internetgovernancepanel.org

7 See for example the recommendations from the 2013 African Internet Governance Forum on "On Principles of Internet Governance, Multi-Stakeholder participation and Enhanced Cooperation" at http://www.intgovforum.org/cms/images/2014/report%20afigf%202013.pdf

evaluation; 6) to ensure balanced inclusion of relevant stakeholder groups; and 7) mechanisms directed specifically at governments, linked to intergovernmental processes and institutions. I also identify risks that should be considered in operationalizing these mechanisms.

Mechanisms for sharing information, tools and innovation. As there is a separate chapter in this volume that focuses on an information clearinghouse, there is no need for further discussion here. What should be considered is the sustainability of such a clearing-house. It would therefore make sense to closely link the information clearinghouse itself, or the coordination of a network of such clearinghouses, to an existing mechanism such as the Internet Governance Forum. Since governance is evolving, this clearinghouse can also provide access to innovation in governance and participation, such as on how to facilitate effective remote participation. Initiatives such as the Governance Lab at New York University can be brought into the mix to share new ideas and technology-enabled platforms for inclusive governance.

The location of this mechanism is particularly important. If this clearinghouse is not perceived as an honest broker, actors throughout the internet governance ecosystem will be reluctant share information with it, and will not fully trust the information it provides.

Multistakeholder forums and dialogues. The value of spaces where internet policy can be discussed and debated has been demonstrated by the Internet Governance Forum at global, national and regional levels. The more inclusive these dialogues are, the better. The IGF process needs to be strengthened, and the IGF secretariat needs leadership and greater capacity. The NETmundial roadmap points to how this can be achieved by implementing the recommendations of the UN CSTD working group on IGF improvements by the end of 2015.[8]

Stakeholder specific forums and dialogues. For stakeholder groups to function effectively in a multi-stakeholder context, they need to have the opportunity to examine and analyze issues among themselves. This will enable them to engage in multistakeholder forums with greater confidence.

All fora, be they multistakeholder or stakeholder group-specific, are open to capture. Stakeholder groups as defined in the internet governance ecosystem (business, civil society, government and the technical community) are all internally diverse. This is most noticeable in civil society as it is such a large group, but other stakeholder groups also contain multiple interests and perspectives. If it is worth having, the multistakeholder model must support the expression of diverse views within as well as among stakeholder communities. Caucusing, which tries to achieve consensus around a 'private sector' view or a 'civil society view' or an 'African view' is needed at times, but it risks undermining the value of diversity of perspectives.

A broad normative framework and guiding principles. Strengthening democratic internet governance that places the public interest and human rights at its core at the national level requires guiding principles that provide direction, and the means for holding actors accountable.

The value of such principles was demonstrated by the Brazilian process where the multistakeholder Internet Steering Group (CGI.br) developed principles in 2010 that eventually formed the basis for the Marco Civil, legislation that provides a civil framework for governing the internet.

Building on the many efforts to agree on common principles for internet governance (e.g. by the IGF Dynamic Coalition on Internet Rights and Principles), the NETmundial statement outlines principles that can play precisely this role. What is needed now is uptake at national levels. Adoption by intergovernmental as well as multistakeholder forums, particularly at regional levels, can help achieve this.

Impetus is coming from intergovernmental spaces such as the Human Rights Council and the General Assembly with both spaces adopting resolutions on the protection of human rights on the internet, particularly freedom of expression and the right to privacy.

Research, learning, monitoring and evaluation. Support at a global level for financing national level research on the process and outcomes of national internet governance processes is critical. While it is very valuable for internet governance institutions to monitor their own performance (e.g. through using tools such as the code of good practice for internet governance developed by the Council of Europe, APC and the

8 "Improvements should include inter-alia: a. Improved outcomes: Improvements can be implemented including creative ways of providing outcomes/ recommendations and the analysis of policy options; b. Extending the IGF mandate beyond five-year terms; c. Ensuring guaranteed stable and predictable funding for the IGF, including through a broadened donor base, is essential; d. The IGF should adopt mechanisms to promote worldwide discussions between meetings through intersessional dialogues." From clause 3 in Section II of the NETmundial Roadmap available at, http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf.

UN Economic Commission for Europe), there is also a need for external, and independent monitoring and evaluation. Mechanisms that enable evaluation and monitoring should also facilitate bottom-up feedback from stakeholders affected by the decisions being made.

If the research, monitoring, and evaluation mechanisms do not include the involvement of actors who are not internet governance insiders, the learning that results is likely to be limited in its perspective and value.

Capacity building. The need for capacity building has been discussed extensively throughout the multistakeholder internet governance ecosystem. What is needed is a diverse range of interventions, from 'summer/winter' schools, such as the European, African and Global South schools on internet governance, to distance learning as provided by the Diplo Foundation and Hivos. Guided support for onsite participation is also critical and programs, such as those provided by the Internet Society (ISOC), ICANN and others, all add value. They do not always enable sufficient analytical and critical thinking, and therefore the role of more comprehensive university-based programs are also necessary, as well as of online forums that enable debate. Coalitions and networks also provide capacity building for their members.

There is also need for a much more localized capacity building approach, which can respond more effectively to the subregional and national realities, institutional and regulatory frameworks.

Mechanisms to support capacity building need to avoid the notion that capacity gaps only exist in developing countries. Or, put differently, avoid the notion that the primary reason for the lack of support for multistakeholder processes among developing country governments, and that the lack of participation from developing country stakeholders in general, can be attributed to lack of knowledge and lack of capacity. There are of course knowledge gaps, but these go both ways. Europe, where regional policy and regulation has evolved steadily over the last few decades, struggles to grasp the difficulties that landlocked countries in Africa face with regard to accessing international undersea cables. Internet users who have grown up with computers and internet access in their homes, schools, and workplaces find it hard to grasp reservations that advocates for the internet as a driver for development have about the dominant means of access in developing countries being via mobile handsets.

Mechanisms to build capacity therefore need to address these gaps in knowledge and understanding and not simply be targeted at "bringing developing country stakeholders up to speed." Capacity building is often used as a Band-Aid, with rich countries proposing resources/aid for multistakeholder processes as a means of securing political support at international processes. This approach lacks legitimacy as well as reliability.

If capacity and capacity building are to be defined by the North for the South it will only reinforce existing inequalities in power and will fail to strengthen multistakeholder processes at either national or global levels.

A further risk lies in not involving non-internet insiders in capacity building. As already stated, internet governance evolves so rapidly and touches on so many spheres, that capacity building with the goal of increasing participation must involve broader expertise.

Mechanisms to ensure balanced and fair inclusion of stakeholders. Balanced participation will always be hard to achieve and mechanisms to support this is critical. It involves identifying which communities are affected by a specific process and facilitating their participation. It also involves understanding what interests are at stake, and ensuring that participation is such that the broader public interest can be fairly debated and protected.

This mechanism needs to be able to provide 'no strings attached' financial support to stakeholders who do not have the means to participate in internet governance processes. It also needs to provide guidelines for agenda setting to ensure that less powerful stakeholder groups, such as civil society, are not just passive participants.

Here too capture is a potential risk. Most institutions (be they from business, government, technical community, or civil society) who finance participation in internet governance processes have some expectation, spoken or unspoken, that those they finance will be broadly aligned with their stance on contentious issues.

Mechanisms directed at governments, and linked to intergovernmental processes and institutions. Global mechanisms to support the multistakeholder approach at national levels need to consider the role of governments, and of intergovernmental processes, if they are to be taken seriously and have impact. They need to be able to support and provide expert input into decision-making processes as well as encourage and guide behavioral change. Governments have a vital role in enabling policy environments and upholding individual human rights. This role is not trivial and

cannot be developed, implemented, or monitored in isolation from other stakeholder groups.

The multistakeholder model should not be a device for bypassing governments, but a means of engaging them (and the many people, views, and functions within them). Tasks such a mechanism can undertake include: putting multistakeholder approaches on the agenda of intergovernmental meetings and processes; leading a process of formal adoption of the NETmundial statement by intergovernmental bodies at regional and global levels; providing guidelines on governments consistently making their delegations to international events multistakeholder; and providing guidelines on building national, consultative multistakeholder public policy participation processes.

Institutionalization Options

The obvious questions are: Who establishes these mechanisms? Where should the be located? Should they be coordinated and if so how?

Like the ecosystem they will interact with, the above mechanisms can be decentralized and distributed. Many of these mechanisms exist already, in some form or another. A first step therefore would be to identify and document existing mechanisms, and establish where the main gaps are. However, even a distributed network of mechanisms needs some coordination to function effectively and respond to stakeholder needs. This coordination function and clearinghouse role needs to be respected and considered legitimate by as many stakeholders as possible. It should be located in a space that is trusted by civil society, business, the technical community, and by both the 'new' governance institutions and formations, and the traditional 'intergovernmental' sector.

It needs to be non-aligned, particularly in the sense of not being dependent on an institution or entity that is currently seen as playing a controlling role in internet governance, or one with designs on playing such a role. With its ties to the United Nations, its independence, and its own 'multistakeholder advisory group' appointed by the UN Secretary General, the Internet Governance Forum could be the ideal home for this clearinghouse and coordination function. Being part of the extended United Nations family can facilitate entry into spaces where governments make decisions, and can contribute to broader efforts to making those spaces more inclusive and multistakeholder. But it can also increase the bottlenecks inherent to bureaucracy.

Establishing any new function for supporting the multistakeholder approach linked to the IGF could contribute to the badly needed strengthening of the IGF (particularly at the level of political leadership, institutional capacity and financial sustainability).
uEnter the NETmundial Initiative: Started by the Chief Executive of ICANN, and facilitated and hosted by the World Economic Forum (WEF), this initiative appears to have good intentions, but is tainted by the lack of transparency and inclusion around its formation. It could even, potentially, set in motion the strengthening of the IGF that is so badly needed.

Can the WEF and the NETmundial Initiative provide an opportunity for discussing how to build on the successes of NETmundial and address some of its weaknesses? Certainly it can, although I believe it would have been able to do this far more transparently and effectively if they located this discussion at the 2014 IGF (before, during or after).

Is the WEF a legitimate home for the coordination function of the mechanisms discussed in this document? While there is certainly a role for the WEF, and its interest in internet governance should be seen as positive, I do not believe it is, or can ever be, the appropriate location for this coordination function. It does not meet the criteria of being 'non-aligned,' due to its close links to business. However, it can be commended for the excellent work it does in facilitating discussion between businesses on the one hand, and government and civil society on the other.

Civil society has long been critical of the WEF. Even civil society leaders who attend WEF meetings are also active in the World Social Forum, the alternative forum which was established to challenge approaches to globalization and development promoted at the WEF. Many developing country governments also do not feel that they have equal voice in WEF events. The point is not to argue about whose world view is wrong or right, or to deny that the WEF does very valuable work. It is simply a case of acknowledging that locating mechanisms to support inclusive multistakeholder models at an organization rejected or critiqued by large numbers of civil society organizations and developing country governments around the world does not make sense.

Particularly among civil society and developing country actors, the IGF has the legitimacy that the World Economic Forum, where the proposed NETmundial Initiative will be housed, lacks. The World Economic Forum, however, has the institutional capacity that the IGF lacks. Ideally, the processes responsible for building on NETmundial and strengthening the IGF can join forces to build a sustainable, durable, transparent, and inclusive governance structure.

Conclusion

Consolidating these mechanisms and advancing them forward requires looking beyond the issue of resources and existing capacity. It is relevant, but governance is a long term process. Mechanisms to support multistakeholder models at the national level will need to be trusted by a wide range of people, governments, and stakeholder groups. Underestimating the importance of securing this trust and legitimacy could harm the progress of multistakeholder internet governance, particularly in those parts of the world where it still has to take root.

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Feet on the Ground: Marco Civil as an Example of Multistakeholderism in Practice

Ronaldo Lemos

When the Snowden revelations hit Brazil, the government took an immediate interest. Wanting to respond quickly, the most comprehensive and feasible reaction was the so-called "Marco Civil da Internet," a draft bill then under analysis in the Brazilian Congress.

What is the Marco Civil and What Rights does it Set Forth?

The difference between the Marco Civil and other pending draft bills was that it was a proposal created by civil society at large, rather than an initiative of the State itself. The Marco Civil building process began years before the Snowden case, and was the product of an open and collaborative effort--one that can be described as a multistakeholder process.

Passed into law in April 2014, Marco Civil sets forth a comprehensive "bill of rights" for the internet. The enactment of the new law follows closely on the heels of the web's 25th anniversary and Sir Tim Berners-Lee's call for a "Magna Carta" of the Internet, positioning Brazil as the first country to heed that call.

From a process standpoint, as soon as it became clear that Brazil needed a bill of rights for the internet, it also became clear that the internet itself should be involved in drafting it. An 18 month consultation process followed, including soliciting contributions from a variety of stakeholders in a truly hybrid and transparent forum: internet users, civil society organizations, telecom companies, governmental agencies, and universities all provided comments publicly, so that all stakeholders were able to consider one another's contributions. Ultimately, this process led to successfully getting a draft law adopted by the government and proposed for consideration by the Brazilian Congress.

The final version protects rights such as net neutrality, privacy, and takes a strong stance against NSA-like practices. For instance, the use of Deep Packet Inspection at the physical layer of the connection is now illegal in Brazil. The Marco Civil also protects freedom of expression, creating safe harbors for online intermediaries in Brazil, and internet platforms have to take down content only when served with a valid court order.[1]

Another important principle of the Marco Civil is that it actually embeds multistakeholderism as a principle for internet governance in Brazil.[2] This is important because it will influence the Brazilian position regarding internet governance at international fora, where Brazil is now, by law, on the side of initiatives promoting broader participation, and stands in opposition to the trend towards privileging the State's role in implementing internet governance.

In short, the Marco Civil translates the principles of the Brazilian Constitution to the online world. It is a victory for democracy, and stands in stark contrast to the direction of other laws that have been passed recently in countries such as Turkey or Russia, which expand governmental powers to interfere with the internet. Brazil's law can serve as an example to countries willing to take seriously the importance of the net to facilitating both development and a rich and open public sphere.

The Marco Civil also includes a requirement that ISPs providing connectivity services and other internet services retain user data for a year and six months respectively. Although criticized by privacy activists, this is also significantly shorter than the five years that was previously proposed. It also creates a standard

1 This safe harbor does not apply to infringement of copyright-related materials. Copyright has been excluded from the Marco Civil.

2 Article 24. The Federal, State and City Government levels must abide the following directives in the development of the internet in Brazil: I- The establishment of multi-participatory mechanisms for governance, which are transparent, collaborative and democratic, with the participation of government, the private sector, civil society and the academic community.

that improves on the current practices of data retention in Brazil, which were not defined by law, but by agreements between law enforcement authorities and service providers, and because of that, quite opaque.

From start to finish, the approval of Marco Civil took about seven years of intense debate with numerous stakeholders. The support of civil society and active participation on the part of the Brazilian public was crucial. One highlight is the role of the rapporteur of the project, Congress Member Alessandro Molon, who supported the bill from the very beginning and gathered the technical expertise necessary to defend it to its successful conclusion. His dedication to the cause should be an inspiration to politicians dealing with similar issues.

A Brief History of the Project

Marco Civil was not the product of spontaneous creation. It was created as part of a strong public reaction against the passing of a draconian cybercrime bill in Brazil in 2007, nicknamed "Azeredo Law," in reference to a Senator called Eduardo Azeredo, rapporteur and lead proponent of the bill. If the bill had been passed, it would have established penalties of up to four years in jail for anyone "jailbreaking" a mobile phone, and four years in jail for anyone transferring songs from an iPod back into their computers.

With such a broad scope (presaging SOPA and PIPA discussions in the United States years later), the bill would have turned millions of internet users in Brazil into criminals. Moreover, it would have been detrimental to innovation, rendering illegal numerous practices necessary to research and development.

The Azeredo Law sparked broad public criticism, first from academia (including the author of this chapter), followed by strong social mobilization, which included an online petition that quickly received 150,000 signatures online. Congress took notice of the reaction and postponed consideration of the bill, however, the question of regulation remained: If a criminal bill was not the best way to regulate the internet in Brazil, what should be the alternative? In May 2007, I wrote an article for *Folha de São Paulo*, the major newspaper in Brazil, claiming that rather than a criminal bill, Brazil should have a "civil rights framework" for the internet—in other words, a "Marco Civil."[3] That was the first time the term appeared in public.

The idea took off, and was picked up by the Ministry of Justice in Brasilia. In 2008, the Ministry invited the group of professors I was leading then at the Fundação Getulio Vargas, to create an open and multistakeholder process for drafting the bill. It was clear from the beginning that the internet should be also be part of it.

Our team built and launched the platform for debate and collaboration of the bill, whose archives are still available at www.culturadigital.org/marcocivil. From the beginning, a list of principles was proposed: freedom of expression, privacy, net neutrality, rights of access to the internet, limits to the liability of intermediaries, openness, and promoting innovation, which were all supported in the public debate.

Each principle was then turned into law, leading to the creation of specific articles of the Marco Civil, which were then opened to new rounds of debate. The final draft was then embraced by the government, and with the support of four ministries (Culture, Science and Technology, Communications, and the Ministry of Justice) was sent to Congress on August 24th, 2011. The law was finally passed on April 23rd, 2014.

The Importance of Multistakeholderism: Mapping the Controversies in the Project

The Marco Civil political negotiation took place over many years and was extremely complex. Ultimately, the success of the project can be attributed to the multistakeholder process that guided the discussions of the bill; the transparency of each party's position helped reduce information asymmetry, and facilitated negotiations and some necessary compromises.

Below is a controversy map of the Marco Civil listing the main stakeholder interests and disputes during the negotiations. This is a rough and simplistic sketch of a much more complex reality. However, it helps to visualize the disputes and the ways in which the multistakeholder process rendered them visible and their negotiation feasible.

3 Cf. Folha de São Paulo, "Internet Brasileira Precisa de Marco Regulatório Civil". http://tecnologia.uol.com.br/ultnot/2007/05/22/ult4213u98.jhtm, Maio 2007.

ISSUES/ACTORS	NET NEUTRALITY	HIGHLY ENHANCED PRIVACY	SAFE HARBOR FOR SPEECH	DATA RETENTION	FORCED DATA LOCALIZATION	SAFE HARBOR FOR COPYRIGHT	EXPRESS REMOVAL FOR REVENGE PORN
TELCOS	Against	Against	Neutral	Neutral	Neutral	Neutral	Neutral
CIVIL SOCIETY	For	For	For	Against	Against	For	Against
GLOBAL INTERNET COMPANIES	Neutral	Against	For	Neutral	Against	For	Neutral
BRAZILIAN INTERNET COMPANIES	For	Against	For	Against	**Against**	**Against**	Neutral
BROADCAST SECTOR	For	For	For	Neutral	**Neutral**	**Against**	Neutral
GOVERNMENT	For	Neutral	Neutral	For	**For**	**Neutral**	For
LAW ENFORCEMENT/ LAWYERS/FEDERAL POLICE	Neutral	Against	Against	For	**For**	**Against**	For
RESULT	PASSED	PASSED ONLY PARTIALLY	PASSED	PASSED	**NOT PASSED**	**NOT PASSED**	PASSED

Conclusion

The chart attempts to illustrate the complexity of the Marco Civil negotiation, both in terms of the number of parties involved, and the variety of issues under debate. In terms of substance and process, the bill is a significant achievement for Brazil and the global community, and the bill represents symmetry between collaborative process and substantive results achieved. Similar efforts involving complex issues with multiple stakeholders can benefit from the Marco Civil lesson.

However, it is important to mention that "multistakeholderism," a term nowadays more mantra than anything, is insufficient a concept to solve the contradictions and disputes involved in something like the Marco Civil, which required intense negotiation. Multistakeholderism is merely a helpful (and important) point from which to depart. In order to achieve effective results, a much bigger effort is necessary, building bridges between the different stakeholders, avoiding radicalism and polarization, and being prepared to reach compromises--one of the main lessons of the Marco Civil.

The Future of Marco Civil

The approval of Marco Civil is not the end. The bill will face at least two immediate challenges. The first is how the government will define the terms of its application by means of a presidential decree. Every law passed in Brazil is subject to further normative specification by means of an administrative decree. Even though the decree cannot change or go beyond the law itself, it can specify how the law is to be interpreted and applied.

The degree to which the decree will deal with net neutrality, privacy and other issues in practical terms is highly anticipated. The government stated that the decree itself will be subject to public consultation, which, at the time of writing this article, has not begun.

Marco Civil's influence is already spreading regionally and beyond: interested in following Brazil's path, other governments are launching their online consultation processes for writing their own version of Marco Civil. In Europe, members of the Italian parliament have contacted the Marco Civil's rapporteur and also the Institute for Technology & Society to explore a similar process as well.

In sum, in a context in which even democracies like Turkey and Russia have started passing laws that expand governmental control over the internet, the Marco Civil presents a viable alternative. It provides a model, both in process and in substance, on how to approach internet regulation in a way that takes democratic values seriously into account.

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A Journey Can be More Important than the Destination: Reflecting on the CSTD Working Group on Enhanced Cooperation

Samantha Dickinson

The inclusion of the concept of "enhanced cooperation" in internet governance was a late night compromise on the eve of the World Summit on the Information Society (WSIS) Phase II in Tunisia. It was added to the *Tunis Agenda for the Information Society*[1] after a series of preparatory meetings. The Working Group on Internet Governance had failed to reach agreement on the way forward for internet governance, particularly with regard to the contentious issue of the US government's unique role in overseeing the Internet Assigned Numbers Authority (IANA) function. As with so many late night diplomatic compromises made when participants lack sleep and sustenance, the use of vague language was used to plaster over significant political differences. Thus, these issues and arguments have remained unresolved years later with each side of the argument able to interpret the language in ways that suit particular views of the situation. Today, people cannot even agree which paragraphs outline and define the parameters of enhanced cooperation. For some, it is paragraphs 69 to 71 (the "governments only" reading); for others, enhanced cooperation must be understood by reading the entirety of the Tunis Agenda (the "multistakeholder" reading).[2]

From WSIS to WGEC: A Short but Lively History

The *Tunis Agenda* mandated the United Nations (UN) Secretary-General to begin the "process towards enhanced cooperation" in the first quarter of 2006. The Secretary General in turn tasked his Special Advisor on internet governance, Nitin Desai, with the responsibility of liaising with stakeholders in order to "find common ground for further action." However, common ground was not possible, and in his 2006 report, Desai suggested that one way forward would be for the key organizations involved with internet resources to submit annual performance reports.[3] Two rounds of reports occurred in 2008, but these did not indicate a clear way forward as far as constructing a process for enhanced cooperation. That same year, separate from the UN Secretary-General's process, but also based on the Tunis Agenda enhanced cooperation text, Member States of the International Telecommunication Union (ITU) resolved to create a Member States-only Dedicated Group on Internet-Related Public Policy Issues[4] (later renamed as the Council Working Group on International Internet-Related Public Policy Issues or the CWG-Internet).[5] There was a clear division emerging between governments supporting a government-only ITU procedure and other stakeholders who argued for a more multistakeholder process led by the UN Secretary-General involving a broad range of non-governmental and governmental organizations managing internet resources.Those governments that argued for the governments-only ITU process—sought to develop a mechanism to "identify, study and develop matters related to international Internet-related public policy issues"[6] within a specifically ITU-related context. In 2010, the Economic and Social Council's (ECOSOC) annual WSIS resolution asked the UN Secretary-

1 WSIS, *Tunis Agenda for the Information Society*, 2005, http://www.itu.int/wsis/docs2/tunis/off/6rev1.html.

2 Samantha Dickinson, William H. Dutton, Marilia Maciel, Desiree Miloshevic, and Vladimir Radunovic, *Enhanced Cooperation in Governance*, 2014, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2376807, pp. 2-5.

3 Nitin Desai, *Report on Consultations on Enhanced Co-operation*, 2006https://wiki.tools.isoc.org/@api/deki/files/1481/=ReportEnhancedCoop.Edit.04.07.2008.pdf.

4 *Resolution 75 (WTSA 2008): ITU-T's contribution in implementing the outcomes of the World Summit on the Information Society, and the establishment of a Dedicated Group on Internet- related Public Policy Issues as an integral part of the Council Working Group on the World Summit on the Information Society*, 2008, http://www.itu.int/council/groups/wsis/pd/Feb-2009/T-RES-T.75-2008-PDF-E.pdf.

5 ITU Council 2011, *Resolution 1336: Council Working Group on international Internet-related Public Policy Issues,* 2011, http://www.itu.int/md/S11-CL-C-0099/en.

6 *Resolution 75 (WTSA 2008)*, p. 3.

General to convene open and inclusive consultations before the end of 2010 to:

> "[Assist] the process towards enhanced cooperation in order to enable Governments on an equal footing to carry out their roles and responsibilities in respect of international public policy issues pertaining to the Internet but not in respect of the day-to-day technical and operational matters that do not impact upon those issues."[7]

More consultations followed in 2012, when, directed by UN General Assembly resolution,[8] the Commission on Science and Technology for Development (CSTD) held a half-day open consultation on enhanced cooperation on public policy issues pertaining to the internet[9] at the end of the annual WSIS Forum. In between the 2010 and 2012 consultations, some governments, unhappy with what they perceived as years of inaction on enhanced cooperation, tried to add enhanced cooperation issues to the CSTD Working Group on IGF Improvements, threatening to derail that working group in its infancy.

Meanwhile, the 2012 ITU Council resolved to open the modalities of the CWG-Internet a little by enabling public consultations.[10] However, given that only Member States had access to the documents of the CWG-Internet, non-Member States would be responding blind to any such consultations. Attempts by some ITU Council members in 2013 to resolve this problem resulted in a decision that the issue could only be resolved by the ITU Plenipotentiary in 2014. Since 2012, there have been two public consultations, both of which have received dozens of submissions, but in total have been discussed for less than 20 minutes at CWG-Internet meetings.

In late 2012, the UN General Assembly resolution, *A/Res/67/195,* requested the CSTD to establish a Working Group on Enhanced Cooperation (WGEC) to "to examine the mandate of WSIS regarding enhanced cooperation, "through seeking, compiling and reviewing inputs from all Member States and all other stakeholders, and to make recommendations on how to fully implement this mandate."

Embracing Multistakeholder Participation in the WGEC

CSTD's previous Working Group, which made recommendations on how to improve the Internet Governance Forum, had set a precedent for using the multistakeholder format for CSTD working groups, making it easier for the new working group to also be multistakeholder in composition. This was despite the fact that many governments would have preferred a governments-only composition which would have made it easier to avoid discussing the possibility of non-governmental stakeholders being involved in enhanced cooperation, as occurred with the ITU's CWG-Internet. Having different stakeholder groups in the room meant that half the battle had already been fought: nongovernmental stakeholders would be on an equal footing with governments in the discussion and development of recommendations for further implementing enhanced cooperation – a situation that would favor a reading of enhanced cooperation as a multistakeholder process rather than as a government-only one.

The precedents established by the earlier CSTD WG on IGF Improvements enabled WGEC to push the boundaries in other ways as well. Perhaps encouraged by the fact that the non-government members of the WG on IGF Improvements had been able to work constructively with the government members, even governments that had not always associated with supporting openness and transparency did not object to expanding stakeholder engagement in the WGEC process. During the first WGEC meeting in May 2013, for example, the members of the group agreed to open meetings to observers, pending size limitations of the meeting room. Observers were also able to make use of the virtual meeting room and live transcripts originally provided to enable remote WGEC members to participate in the meetings. In addition, observers had a short daily speaking slot in which they could make interventions on the group's work.

WGEC was able to push the boundaries of its multistakeholder modalities, but ultimately increased openness and transparency did not help the WGEC members reach consensus on a set of recommendations about enhanced cooperation. However, despite not being able to achieve its original objectives, the other advances that the group achieved could be used

7 *ECOSOC Resolution 2010/2: Assessment of the progress made in the implementation of and follow-up to the outcomes of the World Summit on the Information Society*, 2010 http://www.un.org/en/ecosoc/docs/2010/res%202010-2.pdf.

8 United Nations General Assembly, *A/RES/66/184: Information and communications technologies for development*, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=%20A/RES/66/184.

9 *CSTD meeting on enhanced cooperation on public policy issues pertaining to the Internet*, 2012, http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=61

10 ITU Council 2012, *Resolution 1344: The modality of open consultation for the Council Working Group on International Internet-related Public Policy Issues (CWG-Internet)*, 2012, http://www.itu.int/md/S12-CL-C-0086/en.

to a) encourage further use of more sophisticated multistakeholder mechanisms within the UN system, and b) encourage more evidence-based discussions on enhanced cooperation in the future.

WGEC as a Potential Trendsetter for Multistakeholderism in Future UN-Related Internet Governance Processes

One of the concerns some governments and critics have of the multistakeholder model is that there is a risk that such processes could be dominated only by those with the resources to participate. Critics of multistakeholder processes in internet governance look at the open, bottom-up model and fear that the openness will perpetuate today's inequalities: those with resources participate while those without rely on fellowships or cannot participate at all. The ITU's 2013 World Telecommunication/Information and Communication Technology Forum (WTPF-13) is an example of a recent event that, while trumpeted as a major success by those in favor of multistakeholder internet governance, was seen by many developing countries as yet another example of US business interests dominating a process and excluding those lacking the resources to attend and participate in the Geneva-based preparatory process for WTPF-13.[11]

WGEC and its predecessor, the CSTD WG on IGF Improvements, offer an alternative to the open, bottom-up model of multistakeholderism: a model of representative multistakeholderism. In this alternative model, each stakeholder group has a set number of seats in the process. There are two ways that the seats can be filled. The first method involves each stakeholder group directly choosing the people who fill those seats. This first method was recently used to select the members of the IANA Stewardship Coordination Group (IGC). However, one unintended consequence of this isolated selection process (without coordination among stakeholder groups) was that the IGC had a statistically large proportion of men from developed countries being selected for the group. The second method involves stakeholder groups submitting a list of names larger than the number of seats available, from which an overall coordinator of the process chooses a subset, usually taking into account issues such as gender balance, regional diversity and developed/developing country representation across all stakeholder groups. This second method is the process used to select stakeholder representatives of the IGF Multistakeholder Advisory Group (MAG).

An advantage of representative multistakeholderism is that it can prevent any single stakeholder group from dominating the process. WGEC and its predecessor, the CSTD WG on IGF Improvements, were not entirely representative, with governments holding the majority of seats in the groups, and with intergovernmental organizations, civil society, business and the technical and academic communities each allocated five seats. However, given early levels of government distrust of the process, providing governments with a few more than half of the total number of seats in each working group probably set the right balance between respecting the sensibilities of an intergovernmental agency (the CSTD) and embracing the multistakeholder values of today's internet governance world.

Rather than attempting to suggest that all internet governance discussions within the UN system should immediately become fully open and bottom-up, it may be useful for nongovernmental internet governance stakeholders to encourage and adopt wider use of this representative form of multistakeholderism as a way to enable governments to become more comfortable and confident over time in interacting with other stakeholder groups on equal footing. The use of representative multistakeholderism is in itself a form of enhanced cooperation between stakeholder groups and may provide a doorway to enhanced cooperation between governments and other stakeholders in looser, more open multistakeholder processes in the future.

Other tools for multistakeholder participation long-used in the internet technical community, such as live transcripts, virtual meeting rooms, and active use of mailing lists between and during meetings to distribute information were other innovations that were embraced by WGEC members, both governmental and non-governmental. The technology was not perfect and it was supported by a very lean secretariat, but the process served to convince governments that tools widely used by the multistakeholder internet governance communities can also enable governments to have an enriched, or dare I say it, "enhanced" form of participation on internet governance issues. In particular, the ability to read the live transcript enabled non-native English speakers to follow the discussions to a greater depth and therefore respond more effectively to issues.

11 Samantha Dickinson, *Reflecting on what the Council decision means for the multistakeholder model*, 2013, http://linguasynaptica.com/council-2013-multistakeholderism.

Using WGEC's "Mapping Exercise" to Encourage Evidence-Based Discussion of Enhanced Cooperation in Future

One of the difficulties in discussing enhanced cooperation over the years has been the fundamental difference of beliefs held by participants. Many developed country governments—particularly those in Europe and the USA—and members of the internet technical community, business and civil society believe that enhanced cooperation is about enabling governments to participate in existing internet governance processes. However, a number of other governments—particularly those from developing countries that have felt excluded from internet governance decision-making—along with some members of civil society believe that enhanced cooperation is very much about governments needing their own forum or organization in which to participate in internet governance on an equal footing with each other, and most importantly, on an equal footing with the USA. Unfortunately, both sides can use the text of the Tunis Agenda to support their views and information on efforts by different internet governance-related organizations to encourage greater participation by all governments has been stored in a distributed manner, very much like the internet itself. This has made it very hard to use evidence-based approaches to overcome the enhanced cooperation standoff. That is, until now. One of the achievements of WGEC was the development of a list of examples of enhanced cooperation compiled by the Correspondence Group.

The Correspondence Group had emerged organically as a result of attempts to make sense of the hundreds of pages of responses received to the first WGEC meeting's questionnaire. It should be noted that at this point, the story of WGEC becomes personal. I was one of two observers to the meeting—Lea Kaspar, co-author of the *Institutionalizing the Clearing House Function* chapter in this book, was the other—who were asked by some of the group's members to sort the responses about existing enhanced cooperation mechanisms into a more manageable form for WGEC members. We stayed late into the night at the second WGEC meeting, after the WGEC members had left, to complete what was originally thought to be a simple task. In the end, there were around 200 examples of enhanced cooperation that had been identified in the responses to the questionnaire. The examples included processes taking place in intergovernmental venues as well as in non-governmental venues. The Correspondence Group was established to develop this work further. The plan was that the final output of the Correspondence Group—what had informally been called the "mapping document"—would not only list existing examples but also detail gaps in the processes, with the aim of helping WGEC members use an evidence-based approach to developing the recommendations on how to fully implement enhanced cooperation.[12] The Correspondence Group was open to any interested participant: both WGEC members and general interested parties. There were some additional contributions from WGEC members and external internet governance stakeholders after the second meeting, but Kaspar and I, in our voluntary capacity, performed the bulk of the work collating and organizing the material in a readily understandable format. Very much aware that we were participating as observers rather than WGEC members, Kaspar and I had been very careful to remain impartial in doing the work, and were constantly in contact with the Correspondence Group Chair and Co-chair to ensure neutrality was being maintained. Updated versions of the mapping document were submitted by the Correspondence Group Chair to the WGEC members' mailing list for their information and approval in between physical meetings.

Lack of time and the need to seek WGEC approval at each step in the development of the mapping document resulted in the document not being completed by the fourth and final WGEC meeting at the beginning of May 2014. An extract of the mapping document is shown in Figure 1. Even in its incomplete state, however, it was clear to many of the WGEC members that the mapping document could have a life beyond the working group. Not only would a fully completed version of the mapping document assist governments in identifying where different internet-related public policy issues were being discussed and how they could participate, but it could also provide other stakeholders with the same resources. In addition, the document has the potential to move us beyond the decade-long political stalemate on enhanced cooperation and support an evidence-based approach to identifying where real change needs to happen. For this reason, it is possible that some governments may fear the mapping document, as it shows that there are, indeed, enhanced cooperation processes that have developed since the Tunis Agenda was written. However, the mapping document does not provide unconditional support for proponents of the other side of the debate either: it is

12 CSTD, *Chairman's Summary of the Second Meeting of the WGEC, Final Terms of Reference for the Correspondence Group of WGEC, and List of Participants*, 2014, http://unctad.org/meetings/en/SessionalDocuments/WGEC_2013_Chairmans_summary_en.pdf.

Fostering a sustainable and innovative Internet for future generations			
Asia-Pacific Economic Cooperation (APEC)	APEC Digital Prosperity Checklist · At the 2008 APEC Trade Ministerial, APEC economies formally endorsed the Digital Prosperity Checklist, which outlines specific actions or steps economies could take in six key areas – or "I's" – that would enable them to promote the use and development of ICTs as catalysts for economic growth and development, as well as the benefits associated with each action. The six "I's" include: infrastructure, investment, innovation, intellectual capital, information flows, and integration (referring to the ability to connect domestic industries with the global economy. · The Checklist, through the presentation of these combined resources, will not only enable economies to better tailor their policy, legal, and regulatory environments to be successful in competing in the digital economy, it will also provide a framework for APEC to consider future work in this area. · The Checklist reflects the general APEC principle of voluntarism. Its elements are neither mandatory nor exhaustive, and it will not prejudice the current or future policy of APEC members.	http://apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Telecommunications-and-Information.aspx	Regional
Internet Corporation for Assigned Names and Numbers (ICANN)	ICANN facilitates the security, stability and resiliency of the Internet's unique identifier systems through coordination and collaboration. DNS security, stability and resiliency is central to ICANN's mission. ICANN facilitates the security, stability and resiliency of the Internet's unique identifier systems through coordination and collaboration. In addition to its coordination role with other root server operators, ICANN has also played a key role in deploying DNS Security Extensions (DNSSEC). DNSSEC is the result of more than two decades of cooperative development in the IETF by networking, security and cryptographic experts from the Internet community. ICANN's efforts involving and drawing on the experience of the global Internet community removed the final obstacle to DNSSEC deployment on July 15, 2010 with a signed root. This was a cooperative effort that incorporated direct involvement of the global Internet community in the management of the root key through regular key ceremonies resulting in a system trusted by this same community.	http://www.icann.org	International
ICANN/Pacific Islands Telecommunications Association (PITA)	ICANN and the Pacific Islands Telecommunications Association (PITA) concluded a Memorandum of Understanding in May 2007, which demonstrates how the concept of enhanced cooperation has been implemented. This MOU, in particular, has had a direct and positive impact on coordination and management of critical Internet resources. The objective of the MoU was to build a non-exclusive partnership that would enable information on Internet issues flow in both directions, promote regional telecommunications and information technology standards, and aid in transferring skills, knowledge, and capacity to the Pacific Islands region.	http://www.icann.org/en/news/announcements/announcement-2-10may07-en.htm	
Internet Governance Forum (IGF)		http://www.intgovforum.org	International
Internet Society (ISOC)		http://www.internetsociety.org	International
Organisation for Economic Co-operation and Development (OECD) Internet Policy Making Principles	Stakeholder groups from business, government, the technical community, and civil society participated in the development of the Principles and have access to them. · At the OECD's High Level Meeting on The Internet Economy: Generating Innovation and Growth, held in June 2011, stakeholders agreed on 14 basic principles for Internet policy making as an important step in ensuring that the Internet remains open and dynamic. The principles address such issues as privacy, security, multistakeholder cooperation in policy development, respect for fundamental rights, promoting cross-border delivery of services, promoting an open, distributed, and connected nature of the Internet, respect for intellectual property protections, among other issues. · The OECD recognized that developing countries needed more direct guidance in understanding how to implement the Internet Policy Principles. It convened a voluntary Group in April 2013 to enable multistakeholder dialogue on challenges at the regional, national, and local levels with IPP implementation. In December 2013, the OECD directed the group to develop a strategy for developing country engagement that concretely addresses the benefits of embracing the Principles for Internet development and governance.	http://www.oecd.org/internet/innovation/48289796.pdf	

Figure 1: An extract from the unfinished mapping document, showing Issue Area (blue), Existing Mechanism, Comments/Description, URL, and National/Regional/International.

very likely that a complete map of existing enhanced cooperation initiatives will show a number of gaps existing in processes and organizations that currently promote themselves as fully inclusive of government participation. A completed mapping document should reveal the complexity of operationalizing enhanced cooperation across a wide variety of structures and processes and remove the binary oppositional nature of the last decade of enhanced cooperation debates.

Conclusion

After WGEC members agreed that they could not reach agreement on recommendations for fully implementing enhanced cooperation, the future of the group became a matter for the Member States to decide at the 17th Session of the CSTD in late May 2014. The future of WGEC proved to be an equally difficult issue for governments to decide on and the final draft ECOSOC resolution on WSIS outcomes[13] contained no text on the future of WGEC. Instead, there was the possibility that ECOSOC could add its own explicit statement on the closure or continuation of WGEC. In the meantime, CSTD Member States did agree to recommend that the CSTD secretariat complete the current work on the mapping document, with the results to be discussed at the CSTD's intersessional meeting at the end of 2014. Reviewing the year of WGEC's deliberations, May 2013 to May 2014, it was unrealistic to expect that the working group could develop recommendations in such a short period of time when most of the previous decade had been spent debating exactly the same issues without result. WGEC did make progress in other ways, however, that should enable future discussions to be less divisive and more embracing of multistakeholder engagement. WGEC built on the precedent set by the earlier WG on IGF Improvements by utilizing more open and transparent and more multistakeholder processes to inform its work. Without the decision to have a public questionnaire, without the responses from stakeholders to that questionnaire, and without the ability for observers to become active participants in the process, the mapping document would never have been possible. The next step is to ensure that the mapping document, which was a serendipitous outcome of the WGEC process, can continue to evolve and be kept up to date well beyond WGEC and help to inform the next decade of work to enhance cooperation that will aim to:

> "[E]nable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues."[14]

13 *CSTD, Draft resolution on Assessment of the progress made in the implementation of and follow-up to the outcomes of the World Summit on the Information,* 2014, http://unctad.org/meetings/en/SessionalDocuments/CSTD_2014_DraftRes_WSIS.pdf.

14 *Tunis Agenda on the Information Society*, 2005, para 69.

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The IANA Transition in the Context of Global Internet Governance

Emma Llansó and Matthew Shears

On the 14th of March 2014, the National Telecommunications and Information Administration (NTIA), part of the United States Department of Commerce, announced that it was seeking to relinquish its responsibilities in the management of the Domain Name System (DNS) and to see the 1998 commitment to the full privatization of the DNS made by the US Government finally fulfilled.[1] The role of the US government in the management of the DNS has shaped international internet governance discussions for over a decade and the NTIA's announcement marks the beginning of the end of that historic and sometimes controversial role. The announcement was met with general approval around the globe but, it should be noted, with some concern in domestic political circles in the US. This chapter looks at the challenges and opportunities facing the global internet community as it works towards realizing the transition of NTIA's role in the coordination of the DNS.

The IANA Transition Announcement

The transition announcement is a relatively straightforward document.[2] It outlines NTIA's role: administering changes to the root zone file and providing stewardship to the management of the DNS. It specifies NTIA's goal: to step away from its DNS management-related functions and "transition key Internet domain name functions to the global multistakeholder community." And it describes the way the transition should be approached: through an ICANN-led convening that will result in a "multistakeholder process to develop the transition plan." The announcement also provides some key guiding principles. The transition proposal must:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the internet.

In addition, NTIA is also clear that it "will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution."

Assistant Secretary of Commerce for Communications and Information Lawrence Strickling elaborated further on these principles during his testimony to Congress on 2 April 2014.[3] In his testimony, Assistant Secretary Strickling noted that the "decentralized distributed authority structure of the DNS needs to be preserved so as to avoid single points of failure, manipulation or capture." He also called for the continued "separation of policy development and operational activities," and noted that "the neutral and judgment free administration of the technical DNS and IANA functions" must be maintained. Finally, he stated that before any transition takes place stakeholders must "present a plan that ensures the uninterrupted, stable functioning of the Internet and its present openness."

The transition announcement does, however, raise many questions. For example, what is the "global multistakeholder community" or "global Internet community"? And what does it mean for the NTIA's role to be transitioned to this community? Nor does the announcement specify the exact scope of the transition plan. This has been particularly vexing, with the early stages of the deliberations yielding a wide divergence of opinion as to what should and should not be under discussion.

1 National Telecommunications and Information Administration, "NTIA Announces Intent to Transition Key Internet Domain Name Functions," 14 March 2014, http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions (hereinafter "NTIA Announcement").

2 Ibid.

3 National Telecommunications and Information Administration, "Testimony of Assistant Secretary Strickling at Hearing on 'Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet'," 2 April 2014, http://www.ntia.doc.gov/speechtestimony/2014/testimony-assistant-secretary-strickling-hearing-ensuring-security-stability-re (hereinafter "Strickling Testimony").

Additionally, the question of NTIA's "stewardship" role has been open to interpretation, with different parties understanding it to mean different things.

The Privatization of DNS Management

To understand the import of the IANA transition announcement, one has to look back at the relationship between the United States government, the IANA functions, and ICANN. The management of the DNS evolved from its earliest days in the capable hands of one man, John Postel, through the process initiated by the US government to create ICANN and award the contract to this new entity, to the transition announcement almost a decade and a half later. Throughout, the US government has been a proponent of the "privatization" of the management of the DNS. In 1998, during the Clinton administration, the Department of Commerce published its Statement of Policy on the Management of Internet Names and Addresses, which articulated four key principles that have shaped the US approach to the management of the DNS ever since:

> **Stability.** The U.S. Government should end its role in the Internet number and name address system in a manner that ensures the stability of the Internet. The introduction of a new management system should not disrupt current operations or create competing root systems. During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system. Security and reliability of the DNS are important aspects of stability, and as a new DNS management system is introduced, a comprehensive security strategy should be developed.
>
> **Competition.** The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.
>
> **Private, Bottom-Up Coordination.** Certain management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.
>
> **Representation.** The new corporation should operate as a private entity for the benefit of the Internet community as a whole. The development of sound, fair, and widely accepted policies for the management of DNS will depend on input from the broad and growing community of Internet users. Management structures should reflect the functional and geographic diversity of the Internet and its users. Mechanisms should be established to ensure international participation in decision making.[4]

The US government's commitment to the full privatization of the management of the DNS has been reaffirmed throughout its relationship with ICANN. The Memorandum of Understanding between ICANN and the Department of Commerce has been amended and extended numerous times since 1998 to reflect the evolution of ICANN and expectations in terms of the performance of the management contract. The MoU was replaced in 2009 by an Affirmation of Commitments that includes numerous review and transparency requirements as well as the commitment to continue to be incorporated in the state of California.[5] The contract for the IANA function has been renewed a number of times since its first award in 2000, with the current contract due to expire 30 September 2015. While the contract can be extended, NTIA has expressed a desire to see the transition of its responsibilities by the end of the current contract period.

The US Government's Role

The US government describes its role in the management of the DNS as the "procedural role of administering changes to the authoritative root zone file – the database containing the lists of names and addresses of all top-level domains – as well as serving as the historic steward of the DNS."[6] Its procedural or functional role in the management of the DNS is relatively straightforward. Complexity arises, however,

4 National Telecommunications and Information Administration, "Statement of Policy on the Management of Internet Names and Addresses," 5 June 1998, http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses.

5 National Telecommunications and Information Administration, "Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers," 30 September 2009, http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

6 NTIA Announcement, *supra* n.1.

in the notion of "stewardship"; what this term means has been the subject of considerable debate.

NTIA's procedural role involves reviewing changes to the root zone file.[7] In particular, NTIA establishes whether or not the proposals for changes to the Root Zone have followed "agreed upon verification/processing policies and procedures." Proposals that have satisfied those policies and procedures are then forwarded on to the Root Zone Maintainer (currently Verisign) to implement. As NTIA notes in the FAQ to the transition announcement: "NTIA has no operational role and does not initiate changes to the authoritative root zone file, assignment of protocol numbers, or allocation of Internet numbering resources."[8] According to Assistant Secretary Strickling, the US government has not exercised "discretion or judgment"[9] with respect to changes to the root zone file.

The notion of "stewardship" however, is more complex. NTIA describes its role in this context as "serving as the historic steward of the DNS, a role that has helped provide confidence in the system."[10] Since the early days of the internet, there has been a continuing relationship between the US government and the management of the DNS through the IANA functions, from the early performance of the IANA functions by DARPA and the USC and then their delegation in 1997 to NTIA. The continuity and stability of the DNS are essential to the continuing success of the internet, and to the extent that NTIA's oversight has contributed to "providing confidence in the system", this has been a crucial role. The idea of stewardship also has an additional dimension, related to institutional accountability for ICANN. The NTIA's ability to award – and possibly withdraw – the contract for the performance of the IANA functions has provided a mechanism that could counterbalance any actions by ICANN that might destabilize the DNS.

The stewardship issue is central to a future internet in which the US government has stepped away from its role in the management of the DNS, and raises many important questions. If one believes that the US stewardship has been, as NTIA describes, to "provide confidence in the DNS," is that stewardship still needed? Has the DNS management system matured and evolved sufficiently to be able to address challenges in the future without the backstop of US government stewardship? Is there a need to replace this stewardship with some other form? These questions are central to ICANN's future role and responsibilities relating to DNS management. ICANN's recently launched "Enhancing ICANN Accountability" review notes that one of its key considerations is how it "remains accountable in the absence of its historical contractual relationship to the U.S. Government and the perceived backstop with regard to ICANN's organization-wide accountability provided by that role."[11]

The International Political Dimension

The IANA transition has significant import to international internet governance. As the internet became more widely used and as governments, in particular, began to fully grasp its relevance to economic development, questions arose as to the governance of the internet, the roles of the US government and ICANN, and control of "critical Internet resources" – domain names and internet protocol numbers, among others. These questions were at the core of the debates during the World Summit on the Information Society (WSIS)[12] from 2003 and 2005, and gave rise to both the Internet Governance Forum[13] and the process of "enhanced

7 See National Telecommunications and Information Administration, "Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions," 76 Federal Register 38, 25 February 2011, http://www.gpo.gov/fdsys/pkg/FR-2011-02-25/html/2011-4240.htm. At present, the process flow for root zone management (see diagram at http://www.ntia.doc.gov/DNS/CurrentProcessFlow.pdf) involves three roles that are performed by different entities through two separate legal agreements with NTIA. The process itself includes the following steps: (1) TLD operators submit change requests to the IANA Functions Operator; (2) the IANA Functions Operator processes the request and conducts due diligence in verifying the request; (3) the IANA Functions Operator sends a recommendation regarding the request to the Administrator for verification/authorization; (4) the Administrator verifies that the IANA Functions Operator has followed its agreed upon verification/processing policies and procedures; (5) the Administrator authorizes the Root Zone Maintainer to make the change; (6) the Root Zone Maintainer edits and generates the updated root zone file; and (7) the Root Zone Maintainer distributes the updated root zone file to the thirteen (13) root server operators. Currently, ICANN performs the role of the IANA Functions Operator, NTIA performs the role of Administrator, and VeriSign performs the role of Root Zone Maintainer. NTIA's agreements with ICANN (IANA functions contract) and VeriSign, Inc. (Cooperative Agreement) provide the process through which changes are currently made to the authoritative root zone file.

8 National Telecommunications and Information Administration, "IANA Functions and Related Root Zone Management Transition Questions and Answers," 18 March 2014, http://www.ntia.doc.gov/other-publication/2014/iana-functions-and-related-root-zone-management-transition-questions-and-answ (hereinafter "IANA Transition Questions and Answers").

9 Strickling Testimony, *supra* n.3.

10 IANA Transition Questions and Answers, *supra* n.8.

11 Internet Corporation for Assigned Names and Numbers, "Enhancing ICANN Accountability," 6 May 2014, https://www.icann.org/news/announcement-2014-05-07-en.

12 United Nations General Assembly Resolution 56/183, World Summit on the Information Society, 21 December 2001, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/56/183&Lang=E.

13 Internet Governance Forum, "About the Internet Governance

cooperation,"[14] each of which have formed the loci for internet governance discussions over the past decade. While some progress was made in acknowledging the importance of the distributed and bottom-up internet ecosystem[15] and beginning to address internet policy and governance questions, the issue of the US government's role in "controlling the root" via ICANN and the IANA functions was – continues to be – a sticking point. The issue contributed to shaping deliberations at the ITU's World Conference on International Telecommunications (WCIT) in December 2012,[16] particularly on the degree to which the International Telecommunications Regulations should address internet issues and the appropriate role of the ITU in internet governance. Debates during the WCIT did nothing to move the ball on internet governance, and the resulting treaty was divisive, perpetuating an increasingly untenable status quo.

The mid-2013 revelations by Edward Snowden on the scale and scope of the mass surveillance practices by the US and its Five Eyes allies significantly changed the tenor of internet governance discussions. Snowden's revelations emboldened those governments that had been calling for intergovernmental approaches to international internet policy. The US found that its internet freedom agenda and its push for multistakeholder processes were widely viewed as hypocritical. The quickly changing internet governance landscape was one of the drivers of the Montevideo Statement[17] in October 2013, when the leaders of many of the non-governmental organizations that perform the technical coordination of the internet released a call for accelerating the globalization of ICANN and IANA functions.

Shortly after the release of the Montevideo Statement, ICANN CEO Fadi Chehadé met with President Dilma Rousseff of Brazil, who had been a chief critic of the US government's internet surveillance practices. This meeting led President Rousseff to agree to host a new conference on internet governance (the NETmundial meeting), with plans to discuss the "further evolution of the Internet governance ecosystem." NETmundial[18] was a defining event: just over a decade since the Geneva phase of the WSIS, the "rough consensus" outcomes of the NETmundial, with its focus on internet governance principles and processes, the multistakeholder model, and the evolution of the internet ecosystem have reaffirmed the governance model at the heart of ICANN and other internet community technical organizations.

The NETmundial document includes a number of references to ICANN and to the transition of the IANA functions. It states that there is an expectation that the "process of globalization of ICANN speeds up leading to a truly international and global organization serving the public interest with clearly implementable and verifiable accountability and transparency mechanisms that satisfy requirements from both internal stakeholders and the global community."[19] It calls for the IANA transition to be undertaken through an "open process with the participation of all stakeholders extending beyond the ICANN community." And, it calls for there to be a review of the "relation between the policy and operational aspects" a reference to the need to ensure that policy-making within ICANN does not in any way influence the operational work of the IANA function (language that was, apparently, watered down from the original which included a reference to structural separation of ICANN and the IANA functions).

There is no doubt that international events such as the WCIT and the Snowden revelations have contributed to defining and shaping the future of internet governance and policy development processes. The NTIA's announcement on the transition of the IANA functions is a prime example: the degree to which those important events expedited NTIA's decision remains unclear, but it is apparent that the increasingly vocal global calls to re-energize the evolution of the internet ecosystem were a substantial factor. The global push and the NTIA's announcement also align with others' vision of the next generation of internet governance; for example, Fadi Chehadé envisions an ICANN without "training wheels" in a future shaped by the outcomes of the NETmundial. Making progress on the IANA transition will be key to furthering the evolution of internet governance discussions at a global level; it is also a challenge that, while not insurmountable, should not be underestimated.

Forum," http://www.intgovforum.org/cms/aboutigf (last accessed 7 August 2014).

14 *See* United Nations Conference on Trade and Development, Working Group on Enhanced Cooperation, http://unctad.org/en/Pages/CSTD/WGEC.aspx (last accessed 7 August 2014).

15 During the WSIS, the notion of specific and defined roles in Internet governance for different stakeholders was introduced. The WSIS also introduced a broader set of stakeholders to governance mechanisms associated with the Internet technical community – concepts of multistakeholder and distributed bottom-up management (governance), with ICANN and the IETF typically held up as representative examples of such organizations.

16 International Telecommunication Union, World Conference on International Telecommunications, http://www.itu.int/en/wcit-12/Pages/default.aspx (last accessed 7 August 2014).

17 Montevideo Statement, 7 October 2014, https://www.icann.org/en/news/announcements/announcement-07oct13-en.htm

18 NETmundial meeting, April 23-24, 2014, http://netmundial.br/

19 NETmundial. (2014). NETmundial Multistakeholder Statement. See http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

US Domestic Considerations

While NTIA's announcement was generally welcomed across stakeholder groupings around the world, the domestic reception, particularly by Republican members of Congress, was less than warm. Many critics of the transfer echoed rhetoric from global internet governance debates to frame the issue as one of the Obama administration relinquishing US "control" of the internet.[20] These criticisms led to several hearings[21] in the House and the introduction of several bills and budget amendments[22] aimed at preventing NTIA from completing the transfer without Congressional approval.

The first of these legislative proposals is the House bill entitled "Domain Openness Through Continued Oversight Matters (DOTCOM) Act of 2014." This bill, introduced by Representative John Shimkus, would prohibit the NTIA from relinquishing responsibility over the internet domain name system pending a report by the Comptroller General, who would have up to a year to produce an assessment of the pros and cons of the transition and an evaluation of any proposals. An amendment added to the Commerce, Justice, and Science Appropriations Bill is somewhat less severe, in that it "directs NTIA to conduct a thorough review and analysis of any proposed transition of the IANA contract. This review shall ensure that ICANN has in place a NTIA approved multi-stakeholder oversight plan that is insulated from foreign government and inter-governmental control. Further, the Committee directs NTIA to report quarterly to the Committee on all aspects of the privatization process and further directs NTIA to inform the Committee, as well as the Committee on Commerce, Science, and Transportation, not less than 7 days in advance of any decision with respect to a successor contract."[23]

It is reasonable enough for legislators to call for transparency throughout the process to develop transition proposals, and to seek thorough evaluation of any transition proposal in an effort to ensure that the DNS will remain stable, secure, and resistant to capture or abuse by any party or stakeholder group. Indeed, these concerns echo the points articulated by NTIA in its announcement and are the same sorts of concerns expressed by members of industry, the technical community, and civil society as they begin to deliberate over proposals. However, there are concerns that it would be completely inconsistent with the multistakeholder approach to governance for a single country's legislature to enact a law prohibiting a bottom-up, consensus-driven process from proceeding without that government's approval. Were Congress to pass such a law, it would represent a significant step back from the commitment to transitioning away from government involvement in the management of the DNS, and would imperil the timeline and the work of stakeholders on the transition proposal. It is also precisely the sort of government interference with (what should be) multistakeholder processes that must be guarded against in a successful IANA functions oversight transition proposal.

ICANN's Role, Scope, and Accountability

The NTIA's announcement specifically called upon ICANN to "convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the Internet's domain name system." NTIA identified ICANN as the best-suited convener of the transition process, given its role in managing the DNS and having the existing contractual relationship for the IANA functions. ICANN's first steps were to open a consultation on the process and kick off discussions at ICANN49 in Singapore.

20 *See, e.g.,* L. Gordon Crovitz, "America's Internet Surrender," Wall Street Journal, 18 March 2014, http://online.wsj.com/news/articles/SB10001424052702303563304579447362610955656; Brendan Sasso, "When U.S. Steps Back, Will Russia and China Control the Internet?" National Journal, 18 March 2014, http://www.nationaljournal.com/tech/when-u-s-steps-back-will-russia-and-china-control-the-internet-20140317; John Hayward, "China, Russia, and Iran want a crack at controlling the Internet," 18 March 2014, http://www.breitbart.com/InstaBlog/2014/03/17/China-Russia-and-Iran-want-a-crack-at-controlling-the-Internet.

21 House Energy & Commerce Committee, Subcommittee on Communications and Technology, " Ensuring the Security, Stability, Resilience, and Freedom of the Global Internet", 2 April 2014, http://energycommerce.house.gov/hearing/ensuring-security-stability-resilience-and-freedom-global-internet; House Judiciary Committee, Subcommittee on Courts, Intellectual Property, and the Internet, "Should the Department of Commerce Relinquish Direct Oversight Over ICANN?", 10 April 2014, http://judiciary.house.gov/index.cfm/2014/4/hearing-should-the-dept-of-commerce-relinquish-direct-oversight-over-icann. As the House passed the DOTCOM Act, Senators Marco Rubio and Ted Cruz sought a hearing in the Senate Committee on Commerce, Science, and Transportation, see, e.g., http://www.broadcastingcable.com/news/washington/republican-senators-seek-hearing-icann-hand/131331 (21 May 2014).

22 E.g., Shimkus Amendment to the National Defense Authorization Act, incorporating the DOTCOM Act into the text of the national defense-spending bill, http://www.internetcommerce.org/dotcom-act-passes-house/. The Senate Appropriations Committee also included an amendment about the IANA functions oversight transition in the Commerce, Justice, and State Departments appropriations bill for FY2015. http://www.internetcommerce.org/senate-approps-iana/.

23 Commerce, Justice, Science and Related Agencies Appropriations Act, Managers' Package, http://www.appropriations.senate.gov/sites/default/files/hearings/CJS%20Managers%27%20Package%20of%20Amendments%20final.pdf.

ICANN's IANA convening process was marred in the early days by what were perceived to be an overly restrictive scoping[24] of the issues that could be discussed, an overly prescriptive process for the development of a transition proposal, and a proposed consultation process that revolved around ICANN meetings alone. There was significant pushback on each of these issues by stakeholders, due to concerns that ICANN was trying to frame the transition process in ways that were designed to favor a pre-determined outcome without an adequate and open discussion. Many stakeholders argued that the transition process must be guided by open and thoughtful discussion, without arbitrary scope limitations, and developed in a way that allows for the full engagement of the global internet community.

As noted above, the ambiguities in the announcement have also led to a robust discussion as to what is exactly meant by "global multistakeholder community" and "global internet community." A narrow interpretation suggests that the "community" is typically represented by the internet technical community, in the form of organizations such as ICANN, the Internet Society (ISOC), the Regional Internet Registries (RIRs), the IETF, and so forth. This has been debated, particularly by civil society, as it was seen to be a more restrictive definition of the global internet community than is warranted – or used in other fora – and would limit the extent of stakeholder engagement and the involvement of interested parties around the globe.

Regarding scope, ICANN's launch of a parallel process to look at enhancing ICANN's own accountability[25] helped to address the concern that the interplay between US "stewardship" of the IANA functions and overall ICANN accountability was not getting sufficient attention. The IANA transition convening is now focused on (or some would argue restricted to) finding a suitable replacement for NTIA's "clerical or procedural" role. Separating the external accountability questions from the administrative ones may seem to be a convenient way of addressing two challenging issues, but the linkages between the two topics remain. The US government provided both a clerical/administrative role (the IANA functions) and a form of external accountability for ICANN. In order for there to be adequate consideration of both these important roles, stakeholders are calling for the two ICANN processes to be considered interdependent and to progress in sync. At the time of writing, the IANA transition process is underway but the accountability process has yet to fully start.

There are issues that will require the consideration of both processes. For example, there is the issue of the nature of the relationships between the "affected parties" – ICANN, the IETF, the RIRs, etc. – and the IANA functions.[26] If and when the US government steps back, what should the nature of the relationship be between ICANN and the IANA functions? What mechanisms need to be put in place to avoid, as Assistant Secretary Larry Strickling has noted, "single points of failure, manipulation or capture?" And absent external accountability, why should one organization (ICANN) have a relationship with the "technical functions that enable the continued efficient operation of the Internet" that is any different than the other affected parties?

The IANA transition convening process and the mechanism for developing a transition proposal are now in the hands of the IANA transition Coordination Group (ICG).[27] The ICG has representation from the major internet technical community organizations, the various ICANN constituencies, and global business. Its role is to facilitate the transition proposal development process, coordinate the inputs from the various communities, and produce (but not decide on) a transition proposal. While the ICG represents various organizations and communities of interest, it does not represent the global internet community. For all stakeholders, and particularly civil society, it will be essential to have input mechanisms beyond those specific to the entities represented on the ICG. It is also crucial that the ICG commit to ensuring that input from the global internet community is given appropriate consideration. This is essential to meeting NTIA's requirements that ICANN work with "other interested global stakeholders."

Challenges and Opportunities

NTIA's IANA transition announcement presents the global multistakeholder community with significant challenges and opportunities. The first challenge will

24 ICANN. "Scoping Document." Accessed 8 April 2014, https://www.icann.org/en/system/files/files/iana-transition-scoping-08apr14-en.pdf

25 ICANN. "Enhancing ICANN's Accountability Consultation." Accessed 6 May 2014, https://www.icann.org/resources/pages/enhancing-accountability-2014-05-06-en

26 Though we have primarily focused on the management of the DNS, the IANA functions include management of protocol parameters for IETF, allocation of IP address blocks to the Regional Internet Registries, and management of the DNS root zone, which is currently maintained by Verisign. *See* Internet Corporation for Assigned Names and Numbers, "IANA Functions: The Basics," https://www.icann.org/en/system/files/files/functions-basics-07apr14-en.pdf (last accessed 7 August 2014).

27 Internet Corporation for Assigned Names and Numbers, "NTIA IANA Functions' Stewardship Transition: Coordination Group," https://www.icann.org/stewardship/coordination-group (last accessed 7 August 2014).

be to produce a global multistakeholder community-driven proposal that can garner the required broad community support. The second is to ensure that ICANN has the appropriate accountability mechanisms in place to account for and/or replace the contracting and stewardship roles of the US government. And the third is to ensure that the proposal and the accountability mechanisms are future-proof, to the extent possible, so as to ensure the continuity, stability, and resiliency of the internet.

Of course, there many other associated challenges, not least of which is that the IANA transition and ICANN accountability processes must each provide mechanisms through which the global internet community (and not just the organizations or communities represented on the working groups) can contribute, and that those contributions are appropriately taken into account. ICANN as convener of these two tracks must ensure that the processes are managed in a neutral manner, reach beyond the immediate ICANN community and actively solicit input from those potentially affected by the transition and those who are involved in internet governance writ large. The IANA functions transition is an important moment in internet governance, and has drawn a significant amount of attention from those inside and outside the ICANN community. The transition presents an opportunity to develop praxis on identifying diverse stakeholders who can and should contribute to governance processes, conducting effective outreach, and bringing those stakeholders into a governance discussion typically dominated by technical considerations in a way that enables them to meaningfully contribute.

There are also broader internet governance-related reasons for getting the IANA transition right. NTIA explicitly calls for the transition of "key Internet domain name functions to the global multistakeholder community" and has as one of its key principles the need for the transition proposal to "support and enhance the multistakeholder model." The IANA transition process must be undertaken in the most inclusive and open manner – informed by the multistakeholder approach as described in the NETmundial principles for internet governance – so as to validate and strengthen multistakeholder approaches to internet governance.

As the likely continued home for the IANA functions, ICANN, and particularly its community, must agree and put in place governance and accountability mechanisms that are appropriate to the task today and in the future. Stakeholders have voiced concerns that the existing accountability mechanisms are not adequate and that the external accountability associated with the US government's contracting and stewardship roles must be replicated or represented in some way. Many stakeholders claim that the IANA transition and the Enhancing ICANN Accountability processes are interdependent and cannot progress in isolation. Others go further to say that ICANN's accountability processes must be significantly strengthened prior to an IANA transition proposal being delivered to NTIA.

Conclusion

Transition success will be measured in many ways. Among others, the process must be fully open and transparent, and must facilitate contributions from outside the internet technical community. The proposal will have to satisfy NTIA's principles and the expectations of the global internet community. The proposal will have to be stress-tested to ensure that it can survive known (and unknown) future challenges as well as be anchored by appropriate and strengthened accountability mechanisms. And it will need to have broad community support and agreement from around the globe. Stakeholders cannot afford for this transition not to be a success – the evolution of the internet governance ecosystem may well depend on it.

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ICANN Globalization, Accountability, and Transparency

Avri Doria

The stakeholders at NETmundial proposed a multistakeholder roadmap for the future evolution of the internet Governance ecosystem. One of these pertained specifically to ICANN:

> It is expected that the process of globalization of ICANN speeds up leading to a truly international and global organization serving the public interest with clearly implementable and verifiable accountability and transparency mechanisms that satisfy requirements from both internal stakeholders and the global community. The active representation from all stakeholders in the ICANN structure from all regions is a key issue in the process of a successful globalization.[1]

This chapter explores the requirements of ICANN globalization and ICANN accountability and transparency.

Globalization

Internationalization began as goal for ICANN over a decade ago. An early indication was given by a Presidential Strategic Committee that explored the possibility "for moving ICANN's legal identity to that of a private international organization based in the US."[2] While the report recommended that the board consider such a move, it never happened. Discussing the importance of creating a regional presence, the report states, "The Committee believes that while ICANN's headquarters may remain in the US, it needs to continue to establish and strengthen regional presences, staffing and continue regional outreach."[3]

Over the years the conversations continued, never moving much until the current President and CEO, Fadi Chehadé, made the issue of globalization a priority.

Relabeling the issue from 'internationalization' to 'globalization' reflected growing political anxiety that the ITU, or some other UN body, would usurp its responsibilities for Internet Names and Numbers. While domain name labels were 'internationalized' on a technical level and called Internationalized Domain Names (IDNs), ICANN leadership realized that referring to ICANN evolution as internationalization might provide an opportunity to those who wanted to transform ICANN into an inter-governmental organization. The political implications of the terms can be seen in their definitions:

> *Internationalization:* Bring (a place) under the protection or control of two or more nations
>
> *Globalization*: Develop or be developed so as to make possible international influence or operation

While ICANN aims to have a diverse and international multistakeholder process, it does not wish to be controlled by two or more nations. On the contrary, it has been aiming to free itself from oversight by a single nation, the United States, for over 13 years.

The discussion of ICANN globalization includes the complication that its generic Top Level Domain names (gTLD), are 'regulated' via Registry and Registrar contracts. The gTLDs are the primary source of income for ICANN: passing on fees paid by the world's domain name registrants through its Registrars and Registries. The contracts that provide the regulatory framework governing the Registrars and Registries are signed in the United States and regulated by US, California, and other US state laws. Given the current political atmosphere in the United States, moving the contracts out of the US anytime in the near future would be difficult, at best.

1 NETmundial. (2014). *NETmundial Multistakeholder Statement. See* http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

2 ICANN, *President's Strategy Committee Report,* http://archive.icann.org/en/psc/psc-report-final-25mar07.pdf

3 Ibid.

In the last 2 years, the organizational structure of ICANN has changed greatly. There are hub offices in Singapore, Turkey, and the US, and engagement offices in China, Belgium, Switzerland, Uruguay, Korea, and the United States (DC). While maintaining its headquarters in the US, ICANN now has a global presence, which can be seen as one step in the process of globalization.

Additionally it has created a new division, the Generic Domains Division (GDD) that aggregates all gTLD functions into a single independent division with its own president. gTLD's are, coincidentally, the part of ICANN that concerns US politicians the most, due to IP and business domain names. It is to be expected that the GDD will remain within the US for the foreseeable future, no matter what kind of globalization occurs within the greater ICANN, and the gTLD business will retain its dependence on US law. This will please American lawmakers and has been noted as an essential requirement by the US Congress for any transition of the IANA Stewardship process - to whatever degree they may, or may not have, have a voice in that transition.[4]

The globalization changes are not only organizational. Ten years ago, ICANN was resolutely an US English language institution. 'Linguistic imperialism' was strong and any hint that it would someday be a multilingual organization was laughable. Over the intervening years, through the efforts of several ICANN board members, advocates, and a dedicated staff, the linguistic barrier has been broken and now, more or less, ICANN operates in at least the six languages of the United Nations.[5]

Ten years ago, all domain names were restricted to characters in English script, despite the fact that various technologies for the inclusion of multiple scripts had existed for a long time. Largely as a result of strong interest, initially from the IGF and then the international participants in ICANN, the IETF reworked the standards for Internationalized Domain Names (IDN) and over the last several years, IDN top level names, both as country code TLDs (ccTLD) and generic TLDs (gTLD), have begun to appear on the internet.[6] ICANN has been a stalwart actor in the process of globalizing the internet by introducing and nurturing the IDNs.

4 The IANA Stewardship process is beyond the scope of this chapter. It has been discussed elsewhere in this volume. See: https://www.icann.org/stewardship

5 Arabic, Chinese, English, French, Spanish, Russian

6 One wonders, had the differentiation between Internationalize and Globalize been an issue at the time, whether these would be called Globalized Domain Names as opposed to IDNs.

This was the still nascent state of ICANN globalization at the time it was recommended at NETmundial that the process of globalization speed up "leading to a truly international and global organization."[7] While ICANN is being globalized, it still has a long way to go. Having offices around the world is a start, but outreach to the global multistakeholder community will require much more than creating an office. It will require bringing in users and non-users of the DNS from diverse nations, understanding their concerns and goals, and taking those concerns and goals seriously. Balancing the global interests of those who participate in the ICANN community, businesses, registrants, and users, will require balancing profit motive and the well-being of registrants, users, and non-users. It will also require understanding the Human Rights impact of ICANN actions and taking those rights impacts into account in its decision making.

One of the sad facts about the current new gTLD expansion is that there were almost no applications from developing economies. Remediating this situation should be part of the goal of globalization. ICANN needs to devote some of its resources to enable developing economies to participate in the economy of new gTLDs. Where are the Registries in the developing economies? Where are the Registrars in developing economies? It is incumbent on ICANN, as part of its globalization plans, to build the capacity of these developing countries.

Beyond enabling and assisting in the buildup of the internet, naming and numbering infrastructure of developing economies, ICANN should consider a remediation round for new gTLDs. There is a global need for a round that is oriented toward applications from developing economies and that assist entrepreneurs and civil society organizations in developing economies to apply for and run these new gTLDs. Until ICANN does that, the current globalization moves may be mistaken for yet another new form of 'neo-colonialism,' where one puts offices in a place to help those that already control gTLDs, but does little to bring the local economies into the modern internet economy. To become globalized, ICANN needs to take its responsibilities in the elimination of the digital divide seriously, and ICANN globalization requires serving the global public interest by enhancing internet infrastructure everywhere.

Accountability

One of the first questions about accountability is "accountability to whom?" ICANN is accountable to the

7 NETmundial. (2014). *NETmundial Multistakeholder Statement*

global multistakeholder community through a bottom-up process. It is also accountable for its execution of the various IANA functions as specified in its contract with NTIA and Memoranda of Understanding (MOU) with other internet organizations. In many cases the interests of the global multistakeholder community are represented among the many participants who dedicate themselves to ICANN service by contributing to its many constituencies, organized as Supporting Organizations (SO), Advisory Committees (AC), and working groups. There are also various processes for continual outreach to bring in participants whose interests are not yet represented within the various ICANN structures. ICANN is working on this goal and has some strong and capable staff working on these objectives.

In defining this accountability one has to see it within the context of multistakeholderism.[8] The multistakeholder aspects of ICANN's accountability includes its commitment to bottom-up policy making, and the requirement that the ICANN board should only approve, and the staff should only engage in, activities that have been initiated, or at least vetted, by the ICANN community using established organizational policy. At ICANN, this is still more the rule than the practice, especially with regard to staff initiatives.

Accountability normally includes three major elements: oversight, transparency, and methods for redress. Once the matter of accountability to is addressed, the next matter is being able to recognize when an organization is behaving accountably, which leads to oversight and community identification of problems that occur. Identification leads to transparency, which then leads to redress once the community or individual determines there is a problem.

Oversight

Experience shows that organizations without oversight will eventually run amok. However, not everyone means the same thing by oversight and not every process requires the same form of oversight, which is a complex concept entailing both hard (commanding) and soft (recommending) forms. Forms of oversight can also be differentiated by being external or internal to the organization. One can also differentiate oversight that is proscriptive and a-priori (in that it directs operations), oversight that consists of periodic reviews or audits, and oversight that is exception-based, dealing with problematic issues if and when they occur. The types of oversight appropriate for an organization vary, as do the types of oversight for different aspects of their operations.

ICANN does have a well-developed form of internal soft oversight in the Affirmation of Commitments

SIMPLE MATRIX	EXTERNAL	INTERNAL
Hard	An external determinative body that can instruct an organization to modify a decision or change its operating procedures. Binding appeals and external dispute resolution mechanisms are an example. With the possible exception of NTIA and its contract granting power, ICANN does not have this sort of oversight.	Processes that allow for enforced management changes. For example, bylaw provisions that allow for officers to be removed from office by those who choose them. While most of the leaders of ICANN policy efforts are elected, it does not have a mechanism for removing leadership other than during elections.
Soft	Recommendations from external groups that can be rejected. The ICANN Independent Review Panel (IRP) is one example.	An Accountability Review Team that makes recommendations that can be either be accepted or rejected by the leadership of the organization. The NTIA/ICANN AOC mechanisms are an example.

Figure 1: Types of Oversight

8 Multistakeholderism (working definition): The study and practice of forms of participatory democracy that allow for all those who have a stake and who have the inclination, to participate on equal footing in the deliberation of issues and the recommendation of solutions. While final decisions and implementation may be assigned to a single stakeholder group, these decision makers are always accountable to all of the stakeholders for their decisions and the implementations.

(AOC)[9] between the NTIA and ICANN. It is a novel, bottom-up oversight mechanism calling for periodic review by multistakeholder participants within ICANN, of major aspects of ICANN, such a Security, Stability and Resiliency, the WHOIS functionality, and the new gTLD program. These are done on a three year rotation. Additionally, a review of the Accountability and Transparency of the organization is also done every three years.[10] In addition to taking a snapshot of the current situation at ICANN, the Accountability and Transparency Review Team (ATRT) reviews the outcomes and results from the previous review teams. Part of its review includes ICANN board and staff responses to recommendations made previously, as well as the effects of those changes.

The ATRT is a soft oversight mechanism in that the ICANN board is not bound by anything other than its respect for the process and concern about stakeholder reactions, to follow review team recommendations. By and large, the board has responded favorably to the recommendations of the various review teams, though occasionally the recommendations have been followed more perfunctorily rather than in the full spirit of the recommendation. However, the periodic ATRT reviews do come back to review and verify.

One of the problems with the AOC review as an ongoing accountability mechanism is that it is a voluntary arrangement between ICANN and the US NTIA. ICANN can pull out of the arrangement unilaterally, just by giving sufficient notice. There is a need to incorporate the AOC reviews into the ICANN bylaws as an institutional and ongoing obligation.

Transparency

Organizational transparency is essential to accountability. If the activities and positions of an organization are unknown, they cannot be learned from, mitigated, or redressed. Definitions of transparency vary: in some cases it means that besides items that have been intentionally redacted, documents and meeting notes are available to the community. For others, it means that a carefully vetted set of rationales for decisions are published, but that the actual discussions and documents that went into the decision are not made available to the community. ICANN's style of transparency is more along the lines of the second definition, though the recent Affirmation of Commitments (AOC) accountability review of the organization has recommended the organization adopt a more revelatory standard. Among the recommendations in the recent ATRT2 report:

- Review decision making transparency in order to establish a policy of default transparency. Periodic review of redacted material to remove redaction status when no longer necessary. (Recommendation 5)
- Develop transparency metrics and reporting. (Recommendation 9.4)
- Greater financial transparency. (Recommendation 12) [11]

One deficit in the ICANN transparency makeup is a weak whistleblower program; without an effective whistleblower program that protects the whistleblowers, transparency is all but impossible. The recent ATRT2 report also recommended that this be reviewed and the opportunities and protections for whistleblowing be improved.

The ICANN Board has accepted the ATRT2 recommendations; the implementation remains TBD. If properly implemented, they will provide a large improvement in ICANN's transparency and in verifiable accountability.

Redress

ICANN defines three redress mechanisms: reconsideration requests, the Independent Review Process and the Ombudsman.[12] Reconsideration requests define a process where "any person or entity materially affected by an action (or inaction) of ICANN may request review or reconsideration of that action by the Board."[13] For the most part, this means that the board is asked to review its own decisions as well as staff actions. The Independent Review Process (IRP) is "a separate process for independent third-party review of Board actions (or inactions) alleged by an affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws."[14] The ICANN Ombudsman is an "independent and impartial neutral dispute resolution practitioner whose function is to provide an independent internal evaluation of complaints by members of the ICANN community" who "believe that the ICANN staff, Board or an ICANN constituent body

9 Affirmation of Commitment page can be found at https://www.icann.org/resources/pages/aoc-2012-02-25-en - the Affirmation itself can be found at: https://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm

10 The most recent ATRT report can be found at: https://www.icann.org/en/system/files/files/final-recommendations-31dec13-en.pdf

11 ATRT2 Final Report, https://www.icann.org/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf

12 ICANN. "Accountability Mechanisms." https://www.icann.org/resources/pages/mechanisms-2014-03-20-en

13 See Article IV, Section 2 of the Bylaws https://www.icann.org/en/about/governance/bylaws#IV

14 See Article IV, Section 3 of the ICANN Bylaws https://www.icann.org/en/about/governance/bylaws#IV

has treated them unfairly" for "matters which have not otherwise become the subject of the Reconsideration Process or the Independent Review Process."[15]

The reconsideration process is a very weak appeals mechanism wherein the ICANN Board reviews actions to see if any rules were broken or processes infracted. By and large, decisions are rarely reversed due to reconsideration. The idea that the board can review its own decisions in a fair and balanced manner is hard for much of the community to accept, and the board's reconsideration involves deciding whether they broke any ICANN rules in making the original decision. The bylaws define the process in such a way that prohibits them from considering any new facts or even previously known facts in a different light, with the result that the ICANN board and staff is free to act with very little restraint or consequence.

The IRP does provide for an external review of board decisions whereby an appellant needs to pay up front for the possible costs of this 'loser pays' process. Estimated to cost nearly one million USD, it is not used very often. Additionally, the IRP decisions are not binding. It has, however been used successfully. Unfortunately after the recent successful use by ICM in the .xxx appeal, the rules for the IRP were tightened in the bylaws. Futhermore, all IRP actions are secret and not discoverable. Whatever redress it may or may not provide, it is not transparent.[16]

The Ombudsman's office takes its role in determining fairness quite seriously, but can, however, only make recommendations and has no enforcement capability. The Ombudsman is also prohibited from taking a case from an ICANN employee, even if it concerns staff activities that might have an adverse effect on ICANN policy, operations, and bylaws commitments.

When reviewed, it becomes clear that there is very little opportunity at ICANN to obtain redress for board or staff decisions and actions. With the possible exception of replacing the president of ICANN, as has been done previously, there is no effective redress for staff actions. This form of redress, however, is a rather extreme consequence, and one best avoided in a stable organization. It is also not likely that the community could even effect such a change as the board does not review its decisions with regard to the president with the community before making them, defining them as an "Organizational Administrative Function that is not subject to public comment."[17]

What is Next for Accountability at ICANN

The most recent ATRT recommended that the community be brought into the process of fixing the accountability situation. The ICANN Board has announced that in the near future it will initiate an accountability improvement process. This was not only recommended by the recent ATRT2 review, but also mandated by the NTIA as a companion process to the IANA Stewardship Transition. While there has been an open comment period on the issues that need to be dealt with in ICANN accountability, as of this writing, the community is still waiting for the analysis of the comments and the process to be defined in cooperation with the community.[18] It must be noted that there is a bit of skepticism in the community about this as the previous ATRT also suggested improvements in accountability, but while there was improvement in some areas, the situation deteriorated in others in the intervening years. At ICANN, the community can only hope that something will improve, because at this point in time, the participants and clients of ICANN have little to no ability to affect the behavior of ICANN staff or the board, despite its commitment to a bottom-up multistakeholder process.

One of the biggest accountability problems ICANN has is that people are losing some degree of trust in ICANN management. During the London ICANN meeting in June 2014, all of the Stakeholder Groups and Constituencies of the GNSO made a joint statement related to accountability:

> I'm Keith Drazek, Chair of the Registries Stakeholder Group, with me are the leaders of all of the GNSO's Stakeholder Groups and Constituencies.
>
> I'm happy to report that the GNSO community took up Fadi's challenge from the Opening Ceremony to seek harmony this week in London. Instead of a song or two, the

15 See Article V of the ICANN Bylaws https://www.icann.org/en/about/governance/bylaws#V

16 A recent IRP memorandum https://www.icann.org/en/system/files/files/icann-memo-procedural-issues-20may14-en.pdf explores the issues brought out in the ICM case and their relation to current issues before the IRP and ICANN Accountability.

17 Board decision and Rationale 30 July 2014, https://www.icann.org/resources/board-material/resolutions-2014-07-30-en#3.c

18 Process defined at: https://www.icann.org/public-comments/enhancing-accountability-2014-05-06-en Comment forum: http://forum.icann.org/lists/comments-enhancing-accountability-06may14/. Subsequent to the article's being written, the plan was released: https://www.icann.org/news/announcement-2014-08-14-en Commentary on this plan can e found at: http://avri.doria.org/post/94938726565/and-then-there-was-a-new-plan-to-deal-with-icann

statement we're about to read represents an unprecedented -- yes unprecedented -- event. It only took us 50 meetings, but I think the rarity of what you're witnessing this afternoon sends a very strong message about our views. The GNSO community, with all our diversity and occasionally competing interests, has come together to unanimously support the following:

The entire GNSO joins together today calling for the Board to support community creation of an independent accountability mechanism that provides meaningful review and adequate redress for those harmed by ICANN action or inaction in contravention of an agreed upon compact with the community.

This deserves the Board's serious consideration - not only does it reflect an unprecedented level of consensus across the entire GNSO community, it is a necessary and integral element of the IANA stewardship transition.

True accountability does not mean ICANN is only accountable to itself, or to some vague definition of "the world." It does not mean that governments should have the ultimate say over community policy without regard to the rule of law. Rather, the Board's decisions must be open to challenge and the Board cannot be in a position of reviewing and certifying its own decisions.

We need an independent accountability structure that holds the ICANN Board, Staff, and various stakeholder groups accountable under ICANN's governing documents, serves as an ultimate review of Board/Staff decisions, and through the creation of precedent, creates prospective guidance for the board, the staff, and the entire community.

As part of the IANA stewardship transition, the multi-stakeholder community has the opportunity and responsibility to propose meaningful accountability structures that go beyond just the IANA-specific accountability issues. We are committed to coming together and developing recommendations for the creation of these mechanisms. We ask the ICANN Board and Staff to fulfill their obligations and support this community driven, multi-stakeholder initiative.[19]

19 Personal communication of the original text. The text as spoken can be found at: http://london50.icann.org/en/schedule/thu-public-forum/transcript-public-forum-26jun14-en

As of this writing, though a month has passed, neither the CEO of ICANN nor the ICANN Board has responded specifically to this request. Perhaps one of the first things that ICANN needs to improve in terms of its accountability is its responsiveness to the ICANN constituencies in an open and timely manner.

Conclusion

Globalization, accountability, and transparency were defined by NETmundial as important requirements for ICANN in its commitment to bottom-up multistakeholdersm. Together, these requirements represent ICANN's commitment to the global multistakeholder community – the community of all of those with a stake in the internet, including those who are active in the process and those who are not, either due to choice or current lack of capacity to participate.

ICANN has been working on globalization, accountability, and transparency for a decade now. It is an interminable task that can be continuously improved upon with sufficient attention and devotion. Those who believe in ICANN as an organization at the forefront of the multistakeholder governance movement live in hope that the organization and its CEO, board and senior management will allow the community help the organization live up to its ideals.

Ms. Doria is an itinerant research consultant. She is a member of the ICANN GNSO council as a representative of the Non-Commercial Stakeholder Group (NCSG) and was previously chair of the GNSO Council. She is a member of the UN Working Group on Enhanced Cooperation (WGEC) and was a member of the UN Working Group on Internet Governance (WGIG). She spent 5 years as a member the Internet Governance Forum (IGF) Secretariat and is a part time research associate for the Association for Progressive Communications (APC) as well as a part time VP, Policy and Governance, for dotgay LLC working with the LGBTQI community. As a technologist she has been involved in the development of Internet protocols and architectures for over 30 years, is a participant in the IETF, and a past chair of the IRTF Routing Research Group. She is the author of multiple RFCs and occasionally lectures on Internet governance subjects. Ms. Doria was awarded the ICANN Multistakeholder Ethos award in 2014.

Towards Information Interdependence

James Losey

Internet governance is influenced through tensions of both domestic and international policies. In 2010, Mueller suggested that four policy areas drove internet governance debates: intellectual property protection, content control, cyber security, and critical internet resources,[1] a list that should be updated to include surveillance and data retention. Debates around these issues illuminate overlapping tensions between states employing Westphalian ideologies to enforce territorial policy regimes to exclude outside influence, states attempting to affirm domestic authority including through data localization proposals, and states seeking extraterritorial control of content or access to data.

The future growth of the internet will potentially destabilize existing power dynamics. What is needed is a third-way approach that provides a middle ground between extraterritorial policy regimes and domestic sovereignty and offers a way forward for the swing states in the internet governance debate. Following an analysis of sovereignty in debates of internet governance, this paper offers information interdependence as a way forward with examples across five issue areas that impact internet governance debates.

Background

Mueller and Wagner categorize one group of state actors in internet governance debates as those focused on affirming sovereignty with respect to internet traffic and content.[2] These states, such as China, Russia, Brazil, and South Africa, have historically approached internet governance debates with the interest of reaffirming state authority over domestic internet concerns. But these states represent one side of the spectrum of the issue of territory and the global internet, and states are shifting along the spectrum.

The World Conference on International Telecommunications (WCIT-12) "confirmed the existence of complex fault lines in the international community," particularly in terms of applying domestic authority to the internet.[3] There, Russia and China drove efforts to reinforce recognition of borders, and conference delegates from three dozen countries made declarations or reservations about the final text with the regard to their sovereignty over communications.[4]

However, these fault lines are evolving, and Mueller and Wagner argue that the Global Multistakeholder Meeting on the Future of Internet Governance (NETmundial) demonstrates a shift in alliances.[5] Although Brazil traditionally has been aligned with states critical of the U.S. and U.S. controlled institutions such as ICANN, Brazil hosting NETmundial brought the nation together with ICANN in organizing a summit.[6]

The shifts in internet governance, and other globally impactful information policy issues, illuminate the need for a better understanding of how states approach sovereignty across these issues. Mueller has differentiated between states seeking strong sovereignty over the internet under the definition of states "forcing the Internet to conform to the authority and parameters of the nation-state" and states that may still retain governance but participate in networked institutions.[7] However, Mueller acknowledges the difficulty in including states seeking extraterritorial application of information policy regimes in this spectrum.[8] Understanding current international tensions and defining way forward requires a more nuanced approach to understanding sovereignty and the internet.

1 Milton Mueller, Networks and States: The Global Politics of Internet Governance (Cambridge: MA: MIT Press, 2010), 6.
2 Milton Mueller and Ben Wagner, "Finding a Formula for Brazil: Representation and Legitimacy in Internet Governance," Working Paper, Internet Policy Observatory (2014)
3 Mark Raymond and Gordon Smith, "Reimagining the Internet: The Need for a High Level Strategic Vision for Internet Governance" Internet Governance Papers No. 1, The Centre for International Governance Innovation (2013).
4 Ibid.
5 Mueller and Wager, "Formula for Brazil."
6 Ibid.
7 Mueller, "Networks and States," 256.
8 Ibid. 257

Sovereignty and the Internet

Sovereignty, while referring to recognition and application of state authority, is a nuanced term, and differences in state application of authority provide a critical window of analysis. Westphalian sovereignty (derived from the Peace of Westphalia) is commonly the definition used when describing the implications of "cyberborders," and states seeking to maintain cultural or regime stability exemplify Westphalian approaches to information policy.[9] These examples include aggressive efforts to control content, such as China's Green Dam filtering system,[10] or the reduced internet speeds and filtering in Iran.[11] The BRICS have pushed for Westphalian approaches to cyber security,[12] as have countries such as Kyrgyzstan, Kazakhstan, Tajikistan and Uzbekistan.[13]

In addition to endeavoring to exclude content, services, or data, some states adopt measures to reaffirm state authority over internet data and communications. Mascolo and Scott's "technical sovereignty" describes state control over data storage and transport, a term that risks being more focused on the technological mechanisms while excluding other mechanisms of state authority, such as judicial or legislative measures.[14] Krasner's "domestic sovereignty" is perhaps a more apt term to describe structures of state authority.[15] Approaches to domestic sovereignty over the internet include over a dozen countries discussing data localization proposals.[16] For example, in response to US international surveillance, German Chancellor Merkel proposed a German internet with Deutsche Telekom routing traffic to stay within the Schengen area.[17] Although these proposals have yet to be implemented, the privacy protection regime of the European Union which regulates the transfer of personal data outside of the EU is a step in this direction. Brazil also explored domestic legislation to require internet companies to store data within domestic data centers, although the measure was dropped from the final version of the recently-passed Marco Civil da Internet.[18]

Westphalian and domestic sovereignty are two approaches for reaffirming territorial authority on the internet. The other end of this spectrum is information empire—policies and practices in which states seek extraterritorial applications of internet jurisdiction. For example, a recent court case in Canada required Google to edit search results globally rather than just for the Canada focused search product.[19] Additionally, in May 2014 the European Court of Justice ruled that Google must provide a mechanism through which individuals could request the removal of search results in order to maintain a "right to be forgotten."[20] By late July 2014, Google had received over 300,000 requests.[21] While Google currently is only blocking links in Europe, the Article 29 Data Protection Working Party is reviewing the question of whether links should be blocked globally.[22] US surveillance practices are another example of information empire: the PRISM program accesses user data from Skype and Microsoft, Google, Facebook, AOL, Apple, and others.[23] In a

9 Katherine Maher, "The New Westphalian Web," Foreign Policy, February 25, 2013, Accessed July 25, 2014, http://www.foreignpolicy.com/articles/2013/02/25/the_new_westphalian_web.

10 Robert Faris, Hal Roberts and Stephanie Wang, "China's Green Dam: The Implications of Government Control Encroaching on the Home PC," OpenNet Initiative, Accessed July 20, 2014, https://opennet.net/chinas-green-dam-the-implications-government-control-encroaching-home-pc.

11 Simgurgh Aryan, Homa Aryan and J. Alex Halderman. "Internet Censorship in Iran: A First Look." Proceedings of the 3rd USENIX Workshop on Free and Open Communications on the Internet (2013); Laurent Giacobini, Arash Abadpour, Collin Anderson, Fred Petrossian, and Caroline Nellemann. "Whither Blogestan: Evaluating Shifts in Persian Cyberspace." Iran Media Program, Center for Global Communications Studies (2014).

12 Hans Ebert and Tim Maurer, "Contested Cyberspace and Rising Powers," Third World Quarterly 34, no. 6 (2013): 1054-1074.

13 Ron Deibert, "Distributed Security as Cyber Strategy: Outlining a Comprehensive Approach for Canada in Cyberspace." Research Paper, Canadian Defense & Foreign Affairs Institution, (2012).

14 Georg Mascolo and Ben Scott, "Lessons from the Summer of Snowden The Hard Road Back to Trust," Open Technology Institute and Wilson Center (2013).

15 Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, (Princeton, New Jersey: Prince Princeton University Press, 1999).

16 Jonah Force Hill "The Growth of Data Localization Post-Snowden: Analysis and Recommendations for US Policymakers and Business Leaders." Conference on the Future of Cyber Governance ,The Hague Institute for Global Justice (2014).

17 Ibid.

18 Philippe Bradley and Dan Cooper, "Brazil Enacts 'Marco Civil' Internet Civil Rights Bill," InsidePrivacy, April 28, 2014, Accessed July 20, 2014, http://www.insideprivacy.com/international/brazil-enacts-marco-civil-internet-civil-rights-bill/.

19 Ashley Zeckman, "Google Censorship Ruling in Canada Has Worldwide Implications". Search Engine Watch. June 19, 2014, Accessed July 25, 2014, http://searchenginewatch.com/article/2351154/Google-Censorship-Ruling-in-Canada-Has-Worldwide-Implications.

20 Court of the Justice of the European Union, "Press Release No 70/14," May 13, 2014, Accessed July 30, 2014, http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf.

21 Loek Essers, "EU, Google, Microsoft, Yahoo meet on 'right to be forgotten' but questions remain," PCWorld, July 25, 2014, Accessed July 28, 2014, http://www.pcworld.com/article/2458380/eu-google-microsoft-yahoo-meet-on-right-to-be-forgotten-but-questions-remain.html.

22 Article 29 Data Protection Working Party, "Press Release," July 25, 2014, Accessed July 30, 2014,http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/20140725_wp29_press_release_right_to_be_forgotten.pdf.

23 Glenn Greenwald and Ewen MacAskill, "NSA Prism program taps in to user data of Apple, Google and others," The Guardian,

startling revelation of the scope of the US surveillance regime, the *Washington Post* revealed in March 2014 that the NSA records all the phone calls in one country with plans to expand to the program to five more.[24]

Information Interdependence

These distinctions provide the opportunity to distinguish between state efforts to control domestic information landscapes by preventing access to specific websites or services in order to maintain regime stability and states attempting to establish domestic legislation in response to extraterritorial behavior of other states. Critically, distinguishing between Westphalian and domestic sovereignty allows for a potential third-way that bridges domestic sovereignty and extraterritorial policies that potentially undermine the global internet. Krasner defines interdependence as the control of transborder movements, with recognition that interdependence results in diminishing Westphalian control.[25] Keohane and Nye outline a framework for complex interdependence on the basis of a world order defined by multiple channels connecting societies, a multitude of interstate issues with no particular hierarchy, and less reliance on military force.[26]

Building from these characteristics of complex interdependence can provide a framework of information interdependence. The internet creates ever more channels between societies, including digital cosmopolitanism,[27] and Keohane and Nye suggest that the information revolution strengthens the possibility for complex interdependence by supporting more channels of communication,[28] including the global flows of goods and services.[29] Furthermore, even when pursuing Westphalian cyber-borders, securitizing cyberspace is less viable than land or air.[30] Global information policy is ineffectively realized through traditional hard power.

A paradigm of interdependence offers the much needed middle ground that could unite countries struggling for domestic sovereignty while limiting extraterritorial regimes. Bridging this divide offers a critical third-way to the emerging swing states in global internet policy debates. Examples of interdependence are offered across five issue areas driving internet governance debates: critical internet resources, content control regulation, intellectual property protection, cyber security, and surveillance and data retention.

Critical Internet Resources

Internet Assigned Numbers Authority (IANA), oversees key technical functions of the global internet including the allocation of IP address space and top level DNS registry, and the US has had oversight of IANA since 1998. In 2014, Internet Corporation for Assigned Names and Numbers (ICANN) proposed transitioning IANA to the global the multistakeholder community, which would be an important step towards information interdependence. The Internet Governance Project proposes a suite of additional recommendations, including the creation of an independent DNS authority and granting oversight to a consortium of TLD registries.[31]

Content Control Regulation

Not only are national policies that censor content for political or cultural stability inconsistent with human rights, but blocking content and services creates trade barriers for digital economies. Information interdependence for content requires policies that limit barriers for content production and distribution as well as support for freedom of expression online. One critical policy is limiting intermediary liability, effectively reducing incentives for proactive censorship and allowing content production and distribution platforms to proliferate.[32]

Cybersecurity

Cybersecurity can be generally categorized in terms of militarily-focused cyberwar and economic-based

June 7, 2013, Accessed July 10, 2014, http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data.

24 Barton Gellman and Ashkan Soltani, "NSA surveillance program reaches 'into the past' to retrieve, replay phone calls," The Washington Post, March 18, 2014, Accessed July 10, 2014, http://www.washingtonpost.com/world/national-security/nsa-surveillance-program-reaches-into-the-past-to-retrieve-replay-phone-calls/2014/03/18/226d2646-ade9-11e3-a49e-76adc9210f19_story.html.

25 Krasner, *Sovereignty*.

26 Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: World Politics in Transition*, 2nd edition (Glenview: Illinois, 1989).

27 Ethan Zuckerman, *Rewire: Digital Cosmopolitans in the Age of Connection*, (New York: W.W. Norton & Company, 2013).

28 Robert O Keohane, and Joseph S. Nye Jr. "Power and interdependence in the information age." Foreign Affairs (1998): 81-94.

29 James Manyika et al. "Global flows in a digital age: How trade, finance, people, and data connect the world economy" McKinsey Global Institute, (2014).

30 Keohane and Nye, "Information Age."

31 Milton Mueller and Brenden Kuerbis, "Roadmap for globalizing IANA: Four principles and a proposal for reform," Internet Governance Project, (2014), Accessed July 29, 2014, www.internetgovernance.org/wordpress/wp-content/uploads/ICANNreformglobalizingIANAfinal.pdf.

32 CDT, "Shielding the Messengers: Protecting Platforms for Expression and Innovation," December 2012, Accessed July 30, 2014, https://www.cdt.org/files/pdfs/CDT-Intermediary-Liability-2012.pdf.

cyber crime.[33] One approach for addressing economic-based cyber crime can be approached through law enforcement cooperation. For example, through the US Safe Web Act the US Federal Trade Commission works with foreign law enforcement on issues of spam, spyware and online fraud.[34] Military-focused cybersecurity trends toward realism as opposed to interdependence and contends with state and non-state based attackers. Deibert has proposed a framework of distributed security that "emphasizes checks and balances on power, oversight on authority, and protections for rights and freedom" as an alternative to a realist approach.[35] Deibert's approach is to ground cybersecurity in principles for society, consider international implications, limit the secrecy of intelligence agencies, respect core privacy rights, and work towards international norms.[36] Global norms are still emerging at the UN level, providing an opportunity to establish interdependence.[37]

Surveillance and Data Retention

The global scope of US surveillance has caused some states to be concerned about the control of internet traffic and data and has driven debates over the localization of data. Similar fears have lowered trust in services offered by US providers. Interdependence for surveillance and data retention requires multilateral law enforcement agreements to access data while moving towards international privacy protection for the transfer and storage of data. While the latter will likely continue to experience tensions between domestic and regional interpretations, frameworks for law enforcement cooperation exist. For example, Mutual Legal Assistance Treaties (MLATs) provide mechanisms for accessing data from a company in another country's jurisdiction. MLATs can be abused, and can delay investigations, but reformed processes could provide mechanisms for limited law enforcement access, with respect for due process, to user data across borders.[38]

33 Tim Maurer, "Cyber Norm Emergence at the United Nations – An Analysis of the UN's Activities Regarding Cyber-security," Discussion Paper 2011-11, Belfer Center for Science and International Affairs, Harvard Kennedy School, (2011).
34 Federal Trade Commission. "The U.S. Safe Web Act: The First Three years, a Report to Congress" (2009).
35 Deibert, "Distributed Security," 16.
36 Ibid.
37 Maurer "Norm Emergence."
38 Kate Westmoreland, "What are the solutions to the 'MLAT problem'?" Discussion paper, 2014, Accessed July 28, 2014, https://docs.google.com/document/d/1QS6E6_DnENwr9ea088u8cZETdchMg_XFy1cRIF8ec04/edit#heading=h.worb0ss9wv5i. Permission needed to view.

Intellectual Property

Intellectual property offers a cautionary tale of interdependence. Existing agreements include the World Intellectual Property Organization, created in 1967 as a United Nations agency focused on protecting intellectual property rights globally, followed by the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in 1994. However, efforts at new agreements demonstrate both the dominance of the United States in international intellectual property debates, and the overwhelming influence of US companies rather than a citizen-led debate. For example, TRIPS began losing support from India and Brazil while one effort at a renewed agreement, the Anti-Counterfeiting Trade Agreement, drew widespread protests in Europe. The United States stood alone in opposing the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, an agreement to increase access to books for the visually impaired.[39] However, these challenges demonstrate the dilemma of US influence being combined with select business interests rather than interdependence as framework for state relations.

Conclusion

Internet use will continue to expand in the coming years, but the greatest increase in internet users will come from outside of the United States and Europe. Deibert writes, "Internet users in places like China, India, Latin America, and Southeast Asia will soon dwarf these early adopting constituencies" such as the United States and Europe.[40] The increase of internet users and the ways in which their respective governments engage with information policy will undoubtedly destabilize current power dynamics and shift global information policy debates. While China is a dedicated Westphalian state with regards to information polices, Maurer and Morgus describe many of these future growth countries (describing nearly 30, including Argentina, Brazil, India, Mexico, Turkey, and South Africa) as swing states with multifaceted political landscapes, and the strong potential to influence debate.[41]

The emerging shift to a multipolar world necessitates defining a global framework of information policy across critical issues that both minimize information

39 Shae Fitzpatrick. "Setting Its Sights on the Marrakesh Treaty: The US Role in Alleviating the Book Famine for Persons with Print Disabilities." BC Int'l & Comp. L. Rev. 37 (2014): 139-209.
40 Deibert 2012, 6
41 Tim Maurer and Robert Morgus, "Tipping the Scales: An Analysis of Global Swing States in the Internet Governance Debate," Internet Governance Papers No. 7, The Centre for International Governance Innovation (2014).

empire and reduce incentives for countries that might otherwise use cyberborders to rally national interests. This essay provides the foundation for a middle ground to bridge this conflict. While interdependence alone will not resolve the most hardline adherents to Westphalian policies, the risks of isolation from interconnected economies can facilitate the continuation of a global internet regulatory commons. Information interdependence offers a third-way for governance in an interconnected world.

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Towards Information Sovereignty

Shawn Powers

Continuously challenged, states naturally seek means of legitimating their authority, a process that increasingly requires providing a citizenry with some level of freedom of expression. At the same time, technologies are evolving quickly and changing the ways that communities are formed and authority legitimized. For many states, allowing too much freedom of expression risks a loss of legitimacy by another sword: the rise of political challengers more able to engage the masses and offer alternative visions for the future. It is within this continuum—with absolute freedom of expression on one end and total information control on the other—that I explore four case studies in which states discourage access to a singular, shared internet by developing malleable domestic networks more capable of facilitating a balance between freedom and control.

The Rise of Information Sovereignty

The free-flow conceptualization of international communication has been continuously challenged when confronted with the geopolitical reality of sovereignty. One of the first academic volumes explicitly addressing the topic of international communication, edited by Kaarl Nordenstreng and Herbert Schiller, predicted: "The concept of national sovereignty will increasingly emerge as a point of reflection for the most fundamental issues of international communication."[1] Sure enough, the question of sovereignty became integral to debates in the 1970s regarding the rights of governments to prevent the intrusion of information flows from foreign actors. If states have a right to control flows of people into their territory, and how money is exchanged with foreign banks, why don't they have a right to control information flows from foreign actors?

The New World Information and Communication Order (NWICO) grew out of discussions within the United Nations Education, Scientific, and Cultural Organization (UNESCO) meetings of non-aligned countries in Algiers (1973), Tunis (1976), and New Delhi (1976). With the emergence of Direct-Satellite-Broadcast (DSB) technology, governments around the world expressed concern about America's interest in using satellites to increase dissemination of its cultural products in foreign countries. Fears of neo-colonialism via international media flows became widespread, fueling the NWICO movement.

Despite its global appeal, NWICO failed to achieve much by way of substantial policy change. International debates about the fairness of regulation of global information flows resurfaced by way of the World Summit on the Information Society (WSIS) meetings in Geneva (2003) and Tunis (2005), focusing on critiques of continued inequality in access to and benefits from information resources. Today's debates over internet governance, as well as global connectivity, are direct descendants of this specific clash of world views between advocates of a free flow doctrine of international communication and a state-based, information sovereignty approach.

While the arguments for and against particular theories of international information flows haven't changed all that much since the initial assertions of media imperialism and dependency, the stakes of the debate have altered. Whereas the NWICO movement argued in favor of a more fair and equitable balance of information flows, today's information sovereigns strike a different tone, emphasizing the universally utilized political right of governments to manage their borders. This rhetorical shift, emphasizing a universally recognized right that provides the foundation for the modern international system, is gaining traction.

Information sovereignty's emphasis on the political rights of governments to control information flows within their geographically delineated territories doesn't differentiate between developed and developing worlds. Thus, it leverages two simple facts: First, the majority of the world's governments remain eager to protect and strengthen their sovereignty. Second, the majority of citizens support the nation-state system, holding on to nationalist views. It also shifts the

1 Kaarle Nordenstreng and Herbert Schiller, *National Sovereignty and International Communication: A reader*, (Norwood, NJ: Ablex Publishing Corporation: 1979), p. xiv.

conversation from one of blame to one of rights and responsibilities. "I have the right and responsibility to control information flows, same as every government in the world," is a very different argument from: "your information industries are dominant and overwhelming our culture!" As a result, while references to NWICO are few and far between, its intellectual successor—information sovereignty—is gaining traction, especially outside the West.

Information Sovereignty in Practice

Many have suggested that the internet's growth means (or should mean) the end of state sovereignty altogether. The logic behind such arguments is compelling. Technology has enabled citizens to create and join communities based not on geography, but shared interests and ideologies, thus threatening the rationale for state-based nationalism altogether. Why would a citizen pledge loyalty to a state-based nation when a cornucopia of alternative communities that speak to specific interests beckon on the World Wide Web? According to this line of thinking, while states will certainly try to slow the transition, re-asserting their authority and legitimacy, globalization inevitably means the end of the nation-state as we know it.

At the same time, states control the telecommunications infrastructure that enables global connectivity. The physical nature of network connections allows any government to control information flows within its territory in a number of ways, including simply disconnecting its national communications infrastructure from all or parts of the global network. President Hosni Mubarak's decision to take Egypt entirely offline in 2011, as well as Edward Snowden's revelations regarding the existence of government-operated global surveillance apparatus, demonstrate just how vulnerable the Web is to state control. Given the ease with which states can control access to the web, what is stopping governments from restricting access to the internet? After all, even the father of international liberalism—Immanuel Kant—conceded states are motivated first and foremost by self-preservation.[2]

Ethan Zuckerman suggests one answer via his "Cute Cat Theory" of internet activism. The theory's name stems from the fact that, around the world, one of the most popular uses of social media is for sharing videos and photos of cute cats. According to Cute Cat Theory, governments cannot sustain widespread restrictions on internet content because activists and citizens communicate over the same central internet portals like YouTube, Flickr, Facebook, Twitter, Pinterest, etc. Access restrictions applied to any one central portal used by activists would block all access to its content, limiting the sharing of apolitical but highly popular content (like cute cat videos), thereby engendering widespread citizen anger and increasing the likelihood of greater unrest. Zuckerman explains, "Citizens who could care less about politics are made aware that their government fears online speech so much that they're willing to censor the millions of banal videos on YouTube to block a few political ones."[3] Governmental efforts to restrict internet content will fail and in fact speed their loss of legitimacy and decline, or so the theory goes.

Cute cat theory builds on what Asa Briggs and Peter Burke describe as the "Conservative Dilemma."[4] When a conservative government (typically non-democratic regimes, but also some ruling governments in quasi-democratic systems) is confronted with widespread social protest, it has four options for restoring control: propaganda, censorship, total information control, and violent repression. Each choice entails risks, thus the dilemma. Whereby propaganda and censorship are typically inexpensive and the least disruptive, they have also been the least effective, potentially leaving the regime vulnerable and risking further social fragmentation. Total information control and violent repression are highly effective at quieting public dissent and restoring social stability, at least on the surface, but risk a loss of regime legitimacy, pushing those uninterested in the initial protests to join fellow citizenry in calling for reform or regime change. Applying this model to state efforts at curtailing social media, Clay Shirky found that total information control presented a dire threat to a state's economic vitality given the growing interdependence between information systems, national economies and global trade. More than ever, total information control is an extraordinarily risky endeavor for states.[5]

Both Cute Cat Theory and the conservative dilemma assume the existence of global connectivity. For Briggs and Burke, domestic propaganda and censorship often fail because citizens have access to information from actors unconstrained by a domestic censorship regime, thus exposing state efforts as manipulative.

2 Immanuel Kant, *Perpetual Peace, and Other Essays on Politics, History, and Morals*, trans. by Ted Humphrey, (Hackett Pub Co, 1983).

3 Ethan Zuckerman, "The Cute Cat Theory Talk at ETech," *My Heart's in Accra*, 2008. http://www.ethanzuckerman.com/blog/2008/03/08/the-cute-cat-theory-talk-at-etech/.

4 Asa Briggs and Peter Burke, *Social History of the Media: From Gutenberg to the Internet* (Polity, 2010).

5 Clay Shirky, "The Political Power of Social Media," *Foreign Affairs*, January 1, 2011.

Similarly, Zuckerman did not foresee a world where governments would effectively transcend dependence on the global internet by creating their own domestically-driven digital information ecosystems, based on localized content, connecting only to sanctioned parts of the World Wide Web. In place of cute cats on YouTube, for example, each country might have its own, localized version of YouTube, with videos of local cats or, in some cases, copies of selected YouTube cute cats. Citizens eager to generate their own web content contribute to the nation-based networks and portals, thus creating a series of smaller networks more easily controlled and monitored by the government while simultaneously offering hyper-localized applications.

Information sovereignty refers to a state's attempt to control information flows within its territory. But control doesn't necessarily require a government to shutdown access to the internet. It can be asserted in a variety of ways, including: filtering, monitoring and structuring industry-government relations in order to maximize state preferences in privately operated communications systems. A 2010 study by the OpenNet Initiative concluded that more than half a billion users—over a third of all users then on the internet—experienced some form of filtering. This does not include various measures to enforce copyright, prohibitions on hate speech, prohibitions on extremist propaganda, prohibitions on child pornography and exploitation, prohibitions on sales of controlled substances and prohibitions on online gambling, all of which are enforced by a range of democratically oriented governments.

Monitoring, in particular, is an increasingly powerful means of asserting control over internet-based communication. As more and more communication moves into the realm of the digital, government capacity to monitor private communication of all types increases. The digitization of information that is central to the internet's functionality similarly facilitates government efforts to access, record and share data from around the world. Drawing on Jeremy Bentham's articulation of the panopticon, Michel Foucault argues that the mere possibility of ubiquitous yet unconfirmed monitoring of a population is among the most effective ways of controlling behavior.[6] As users in Iran and China are well aware, internet browsing and communication changes drastically when one thinks the government is watching.

Increasingly, both democratic and non-democratic governments are exploring ways to control access to the internet without losing legitimacy and, ultimately, power. I explore these efforts through three brief case studies, identifying the variety of ways in which states restrict access to their nation-based networks, and local access to global networks, incentivize domestic oriented net browsing, and ubiquitous monitoring, all based upon perceived need for social control and security.

For some states, access is only restricted in times of emergency, as was the case in Egypt in 2011. For others, access is systematically restricted, as is the case in Iran. China adopts a multifaceted approach, which includes draconian regulation as well as encouraging local, indigenous content creation. The United States is concerned about the consequences of depending on a shared, unsecured internet, and is thus exploring a variety of public-private partnerships in an effort to find the right balance between free speech and security. Denmark, on the other hand, focuses on utilizing digital tools to gain information on potential criminals, as well as cracking down on copyright violations.

Short of permanently cutting off all access to the internet, governments around the world are exploring the different options for exerting control over domestic information flows. In some cases, these mechanisms allow for greater control over digital flows than was previously asserted over analogue and interpersonal communications. Exploring a small sample of strategies, I begin to map how some states adapt to meet the challenges presented by 21st century connective technologies.

China

China's multi-faceted approach of government regulation, censorship, monitoring, self-regulation, encouragement of national industry and protectionism has been highly effective at keeping Chinese netizens away from foreign applications and content. This effort coincides with a concerted campaign to reframe access to the internet as a privilege, rather than a right, for those citizens able to use the web in ways fit for China's harmonious society. Despite Western predictions of its inevitable failure, China's approach has worked. According to Harvard's Berkman Center, 96 percent of all page views in China are of websites hosted within China.[7]

Although China adopted the concept of a Westphalian state later than most, it did so with ferocity, resulting in a "passionate belief in national sovereignty and territorial

6 Michel Foucault, *Discipline & Punish: The Birth of the Prison* (Vintage, 1995).

7 Hal Roberts, "Local Control: About 95% of Chinese Web Traffic is Local," *The Berkman Center for Internet & Society*, August 15, 2011, http://blogs.law.harvard.edu/hroberts/2011/08/15/local-control-about-95-of-chinese-web-traffic-is-local.

integrity."[8] This passionate belief in its territorial integrity also motivates its relationship with information technology. In 2010, just months after Hillary Clinton called for global recognition of a universal freedom to connect, China countered, arguing that access to the internet was not an international concern, but rather a state issue. Issuing its first ever State Council White Paper in English, *The internet in China* was unequivocal on the question of creating an international freedom to connect to the internet: "Within Chinese territory the internet is under the jurisdiction of Chinese sovereignty. The internet sovereignty of China should be respected and protected."[9]

For China, restrictions on freedom of expression are justified by the need for state interests and power: "Laws and regulations clearly prohibit the spread of information that contains content subverting state power, undermining national unity [or] infringing upon national honor and interests."[10] Chinese authorities deploy a variety of regulations (law), censorship filters (technology), private citizen content creators (subsidy) and intimidation (force) to maintain its information sovereignty.[11]

As a result, China is well on its way to having a popular and robust de facto intranet system. While technically connected to providers and content from around the world, the government uses variations of IP blocking, DNS filtering and redirection, URL filtering, packet filtering, connection reset and network enumeration to control Web access throughout China. The architecture of its system allows the government to monitor and constrain every aspect of the system from the deployment of technology, to the operation of ISPs, to the creation of regulatory agencies capable of enforcing censorship through a dedicated internet police force.[12] The government blocks websites that discuss the Dalai Lama, the 1989 crackdown on Tiananmen Square protesters, the banned spiritual movement Falun Gong, and other internet sites. According to Google, the word "freedom" has been censored since 2010. Microblogging sites (called weibos) are also tightly controlled. New users are required to verify their identity, matched against police data, with the service before being allowed to post. Any user found disturbing social order or undermining social stability, including by "spreading rumors, calling for protests, promoting cults or superstitions and impugning China's honor," is punished, oftentimes without trial.[13]

Regulators require ISPs to self-monitor their web services, deleting any objectionable content. The government employs over two million paid "internet opinion analysts" who pose as ordinary web users to monitor counter criticism of the government. Sometimes called the "50 Cent Party" members, the internet opinion analysts are paid 50 Chinese cents per posting.[14] Members of the government are increasingly encouraged to embrace social media to monitor public opinion (and anger) and "actively spread the core values of the socialist system, disseminate socialist advanced culture and build a socialist harmonious society."[15]

Despite these controls, the Chinese intranet connects to the world's internet in strategically advantageous

8 Chengxin Pan, "Westphalia and the Taiwan Conundrum: A Case Against the Exclusionist Construction of Sovereignty and Identity," *Journal of Chinese Political Science* 15 (4) (December 2010): 376; Min Jiang, "Authoritarian Informationalism: China's Approach to Internet Sovereignty," *Sais Review* 30 (2010): 71–89.ideology, identity, and economy between mainland China and Taiwan. Any prospect for its peaceful resolution, it seems, hinges on bridging those differences through economic and/or political integration. Although the Taiwan conundrum has much to do with wide-ranging cross-strait divergence, this article argues that it cannot be disconnected from one important commonality between Beijing and Taipei, namely, a cross-strait normative convergence on the Westphalian notion of state sovereignty. Encompassing an exclusionary understanding of final authority, territory, and identity, Westphalian sovereignty provides both Beijing and Taipei with a common meaning that Taiwan is an issue of sovereignty, central to their respective national identity and political survival and hence not subject to compromise. As a consequence, it argues that this common meaning is paradoxically responsible for much of the mistrust, tension, and deadlock in cross-strait relations. In order to find a long-term solution to the Taiwan impasse, we need to pay attention to this particular normative convergence as well as to the many differences across the Taiwan Strait. [ABSTRACT FROM AUTHOR]\nCopyright of Journal of Chinese Political Science is the property of Springer Science & Business Media B.V. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use. This abstract may be abridged. No warranty is given about the accuracy of the copy. Users should refer to the original published version of the material for the full abstract. (Copyright applies to all Abstracts.

9 As quoted in Yangyue Liu, "The Rise of China and Global Internet Governance.," *China Media Research* 8 (2) (2012): 52.

10 People's Republic of China Information Office of the State Council, "Section IV: Basic Principles and Practices of Internet Administration," Information Office of the State Council, People's Republic of China. June 8, 2010. http://english.gov.cn/2010-06/08/content_1622956.htm

11 This model of policy analysis is borrowed from: Monroe Price, *Media and Sovereignty: The Global Information Revolution and Its Challenge to State Power* (The MIT Press, 2002).

12 Tom Simonite, "Reading the Tea Leaves of Censorship," *MIT Technology Review* 116 (4) (2013): 20.

13 Murong Xuecun, "Chinese Internet: 'A New Censorship Campaign Has Commenced,'" *Guardian*, May 15, 2013.

14 "'Two Million' Monitor Web in China," *BBC*, October 4, 2013, http://www.bbc.co.uk/news/world-asia-china-24396957.

15 Edward Wong, "New Restrictions on Social Networking Sites in Beijing, China," *New York Times*, December 16, 2011.

ways, allowing connections to the global financial sector and many Western cultural exports. For example, the USITC estimated that in 2009, Chinese unauthorized downloading of copyrighted material cost the US creative industries $48 billion per year.[16]

Most popular Western websites (e.g. Facebook and YouTube) are either heavily censored or, at times, banned altogether, leaving them unreliable and unpopular among Chinese netizens. As a result, a robust Chinese copy-cat internet industry emerged, developing local variations of Google (Baidu), Twitter (Sina Weibo), Facebook (Renren), Ebay (TaoBao), MS Messenger (QQ), and YouTube (Youku). These local copies of popular web services are hugely popular, sometimes providing more functionality than the Western counterparts. For example, Baidu, the Chinese version of Google, includes search results from sites that allow users to freely download copyrighted content, like music, movies and television shows. Google filters similar results due to its compliance with US intellectual property law. Needless to say, Baidu is vastly more popular than Google among Chinese web users.

Restricting foreign web content and applications serves a protectionist agenda as well. The local variations of Western internet services are all owned and operated by Chinese nationals, creating a flourishing internet industry that contributes to China's job growth and GDP. Tencent (better known as QQ) has an annual revenue of $1 billion and a current market capitalization of $24 billion, making it as big as eBay, and bigger than Yahoo!. Baidu earns $1 billion in annual revenue. Overall, China's internet industry generated $42.1 billion in total revenue 2011. This is in addition to $10.8 trillion in total turnover from e-commerce and $118.7 billion in revenue from internet-based auctions.[17] Of course, Chinese-owned companies are also the least resistant to the government's myriad intrusive regulations.

At the same time, Chinese authorities seem cognizant of a need for the appearance of restraint in their efforts at controlling the web. For example, in 2009, the government pushed a rule that would have required the installation of a new software program called "Green Dam-Youth Escort" on all computers sold in China. The software effectively monitors a user's every move. After strong resistance at home and abroad, however, China indefinitely delayed enforcement of the requirement. The manufactures of Green Dam have since faced substantial financial difficulties and are on the brink of bankruptcy.

The decision to pull back from Green Dam suggests a careful balancing act between control and individual rights. The government has, at times, scaled back its blocking of Western content, allowing selective access to certain portals while still blocking particular webpages with objectionable content. Such an approach allows the majority of users to feel as though they are not restricted from connecting to the outside world.[18]

While many Chinese activists use the internet to express criticism of government officials and policies,[19] these criticisms are increasingly contained within a system that allows dissent, but not public protest. Han Han, China's most popular blogger, recently soured on the potential for the internet to transform China, noting, "You feel everyone's really angry, you feel like you could go open the window and you would see protesters on the street. But once you open the window, you realize that there's nothing there at all." *The Economist* suggests that the internet has helped Chinese leaders better manage public opinion, noting, "The internet may well turn out to have been an agent not of political upheaval in China but of authoritarian adaptation."[20]

China has served as a trendsetter for other governments. Russia, Nigeria, and Vietnam each launched their own versions of the 50 Cent Party. Using hardware bought from China's Huawei and ZTE, Belarus, Ethiopia, Iran and many others use deep packet inspection technology to monitor for subversive messaging and content.[21]

Despite seemingly draconian controls—by Western standards—on the web, 85 percent of Chinese citizens support government control and management of internet content. A 2013 study by David Herold interviewed 70 university students in China and similarly

16 US International Trade Commission, "China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the US Economy," Investigation Number 332-519, USITC Publication 4226, Washington, DC: United States International Trade Commission, May 2011.

17 China Times, "China's Internet industry saw vast expansion in 2011," *China Times*. January 12, 2012,http://www.wantchina-times.com/news-subclass-cnt.aspx?id=20120112000104&cid=1202.

18 The Economist, "How Does China Censor the Internet?" *Economist*, April 21, 2013, http://www.economist.com/blogs/economist-explains/2013/04/economist-explains-how-china-censors-internet.

19 Yuezhi Zhao, *Communication in China: Political Economy, Power, and Conflict*. (Rowman & Littlefield, 2008).

20 Quotes from the previous two sentences are from: "A Curse Disguised as a Blessing?" *Economist*, April 6, 2013, http://www.economist.com/news/special-report/21574635-internet-may-be-delaying-radical-changes-china-needs-curse-disguised.

21 "Internet controls in other countries: To each their own-China's model for controlling the internet is being adopted elsewhere," *Economist*, April 6, 2013.

found a remarkable consensus supporting government restrictions and controls online.[22] In terms of protecting its information sovereignty, China has adopted a multi-faceted, flexible model that, thus far, has been quite effective.

Denmark

Denmark is widely considered a bastion for freedom of expression. Section 77 of its constitution is extraordinarily clear on this question: "Anyone is entitled to in print, writing and speech to publish his or hers thoughts…Censorship and other preventive measures can never again be introduced." In 2004, 2005, and 2009 Denmark received a joint first place in the Worldwide Press Freedom Index from Reporters Without Borders.[23]

It is consistently ranked among the most connected countries in Europe and is, by many accounts, a model for internet freedom. But such a perspective fails to account for the impact of surveillance on freedom of expression online, nor the ways in which copyright enforcement also stifles legitimate political speech.

In 2006, Denmark led the push for the EU's adoption of European Data Retention Directive, requiring all fixed network and mobile telephony providers, as well as internet access, email, and Internet telephony providers to retain data regarding traffic and location of users for a minimum of six months. The directive's aim was to improve the investigation of "serious crimes," especially terrorism, by providing European legal authorities access to communications data relevant to a criminal investigation or national security matter.[24]

In 2007, Denmark became the first country to implement the directive for both telecommunications and internet data, going further than the EU mandate by requiring ISPs to record session logs going back 12 months.[25] It is widely considered the "most comprehensive [data retention] law of all the member states."[26] The Danish government sees retention as central to its law enforcement capacity. For example, in 2013, Justice Minister Morten Bødskov explained, "Internet surveillance is extremely important to the Danish Security and Intelligence Service in cases concerning economic crimes and child pornography and it will continue to be important as the criminals move their communication online."[27]

Whereas the EU directive calls for the use of retained data as it relates to "serious crimes," Denmark's domestic implementation mandate allows for law enforcement officials to access retained data related to all criminal offenses, for crime prevention, and on general grounds of national security.[28] In practice, communications data have been used by the Danish police in a variety of cases, very few relating to national security. Rather, the primary use of data has been for investigations pertaining to credit fraud, drugs trafficking, burglary and cybercrime.[29]

Between 2008 and 2012, law enforcement agencies made 22,829 requests for communications data and were denied just 16 times. Requests for internet related data skyrocketed in 2012 to 2270 total requests, a 834 percent increase compared to the previous year (see Table X.1 for additional details).

Separately, Denmark has also come under fire for requiring websites containing (or even linking to other websites that contain) material infringing upon copyright protections. A list of the websites banned in Denmark, leaked by Wikileaks in 2008, included movie-trailor.name, movs.name, videoshop.name, streamtv.name, movies4you.info, tv-project.com, bestvideomanager.biz and other URLs accused of violating Danish copyright laws.

In 2008, a bailiff's court in Copenhagen found that one of Denmark's largest ISPs, Tele2, was assisting its customers in copyright infringement by allowing the use of The Pirate Bay—"The Galaxy's Most Resilient BitTorrent Site"—and issued an injunction requiring it to block access to the site. Tele2 complied, and other major ISPs voluntarily followed. While Pirate Bay is an infamous content sharing portal, one study found

22 David Kurt Herold, "Captive Artists: Chinese University Students Talk about the Internet," *Social Science Research Network*, May 1, 2013, http://dx.doi.org/10.2139/ssrn.2259020

23 "Press Freedom Index 2004", "Press Freedom Index 2005", "Press Freedom Index 2009", Reporters Without Borders.

24 European Parliament Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.

25 Karin Retzer, "Data Retention: Denmark Is First EU Member State to Implement Controversial Directive," *Morrison Foerster*, May 4, 2007, http://www.mofo.com/resources/publications/2007/05/privacy-bulletin-may-4-2007

26 Torben Olander, "In Denmark, Online Tracking of Citizens is an Unwieldy Failure, *TechPresident*, May 22, 2013, http://techpresident.com/news/wegov/23918/denmark-government-will-not-allow-ordinary-citizens-have-digital-privacy

27 Ibid.

28 European Commission, "Evaluation report on the Data Retention Directive (Directive 2006/24/EC)," *Report from the Commission to the Council and the European Parliament* (Brussels: The EU, 2011).

29 Cybercrime includes: computer fraud and attempted fraud, hacking, forgery and disclosure of stolen credit card information. From: "Evidence for necessity of data retention in the EU" (Directive 2006/24/EC). March 2013. http://ec.europa.eu/dgs/home-affairs/pdf/policies/police_cooperation/evidence_en.pdf

YEAR	FIXED NETWORK TELEPHONY	MOBILE TELEPHONY	INTERNET-RELATED	TOTAL
2008	192 (0)	3273 (5)	134 (0)	3599 (5)
2009	133 (0)	3771 (10)	162 (1)	4066 (11)
2010	191 (0)	3801 (0)	243 (0)	4235 (0)
2011	191 (0)	3801 (0)	243 (0)	4235 (0)
2012	187 (0)	4221 (0)	2270 (0)	6678 (0)

Figure 1: Danish Government Requests for Data under the Data Retention Directive, Successful (unsuccessful)*

that 80 percent of the torrents on the site were to legal, non-copyright protected material. According to Pirate Bay spokesperson Peter Sunde Kolmisoppi, "there is actually a larger proportion of infringing material on YouTube than on The Pirate Bay."[30]

On questions of data retention and copyright enforcement, Denmark stands out among its European peers. Whereas other countries are rolling back the use of data retention after a 2014 Court of Justice of the European Union (CJEU) ruling declaring the data retention directive invalid, the Danish Ministry of Justice concluded that the Danish retention policy was not implicated by the ruling.[31] Similarly, while other governments are questioning the value of blocking content sharing portals, in 2010, the Supreme Court of Denmark denied an appeal, requiring ISPs to continue blocking access to The Pirate Bay.[32] Far different from China in its approach, Danish authorities have effectively implemented a robust control regime whereby digital communications data are not only accessible to prove online crimes, but also as evidence supporting prosecutions of offline criminal activity. Of particular note in this case study is the fact that such strict monitoring of digital information flows has been adopted and upheld by the highest legal authority in a country with robust constitutional protections for free speech.

The United States

Western governments are also actively pursuing efforts to assert greater control over domestic information flows, though rarely are they mentioned in the same breath as those pursued by China, Iran and Russia. Yet, from an analytical perspective, the efforts are similar: governments deploying law, technology, subsidy, and force in order to maintain and strengthen information sovereignty, or control over the flow of information within a given physical territory. This section explores how the US government aims to secure the domestic internet from foreign attack or intrusion. Importantly, these efforts are separate from the NSA's foreign surveillance programs, which are related but broader than the scope of this chapter.

The US is pursuing various means of controlling access to the internet under the auspices of security, maintaining the integrity of confidential information, and protecting intellectual property. For the most part, new, secure technologies are tested in military networks and eventually deployed on civilian federal websites and networks. Once implemented throughout government, policymakers are interested in extending secure systems infrastructure, enabling a high level of monitoring and control to private networks deemed important for national security. Precisely which private networks are considered critical for national security is evolving, but at a minimum includes systems "essential to the minimum operations of the economy and government," including telecommunications, energy, banking and finance, transportation, water systems and emergency services.[33]

30 Nate Anderson, "Pirate Bay: survey says that 80% of our torrents are legal." *Ars Technica*, Feb 20, 2009, http://arstechnica.com/tech-policy/2009/02/pirate-bay-survey-says-that-80-of-our-torrents-are-legal/

31 Denmark did, however, decide to suspend key logging requirements, but not because of the CJEU ruling. "The motivation is the technical difficulties of using the retained data on internet sessions for police investigations.…The current session logging requirements were only lifted because they could not produce data that the police could actually use, not because of any inherent conflict with fundamental rights." From: Heini Järvinen, Denmark: "Data retention is here to stay despite the CJEU ruling," *European Digital Rights*, June 4, 2014, http://edri.org/denmark-data-retention-stay-despite-cjeu-ruling/

32 This is the second Danish Supreme Court ruling finding ISPs liable for the transmission of copyright protected content to users. For more, see TDC v. IFPI et al., case number 49/2005 (2006).

* European Commission, "Statistics on Requests for data under the Data Retention Directive (DG Home Affairs, 2013), http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/data-retention/docs/statistics_on_requests_for_data_under_the_data_retention_directive_en.pdf; A query to the EU and Danish authorities regarding the odd similarity between self-reported data in 2011 and 2012 was not responded to prior to publication.

33 US Presidential Decision Directive 63, 1998.

As part of its efforts to boost cyber-security, in 2010, the US established Cyber Command (CYBERCOM) to defend the military's electronic networks, support military and counterterrorism missions and assist civil authorities and industry planners. It is led by the Director of NSA and housed within NSA's headquarters at Ft. Meade, Maryland. CYBERCOM has developed advanced threat-monitoring systems for government networks, including Einstein 2 and Einstein 3.

Einstein 2 has been widely implemented in most government agencies and allows for data inspection upon entry into a federal network. Einstein 3 goes a step further, more thoroughly inspecting all communication for threat risks and alerting DHS and the NSA of suspicious communication in real-time. Rather than looking for malicious attack patterns directed at government sites, Einstein 3 collects, processes, and analyzes all person-to-person communications content using real-time, deep packet inspection technology and connects data with signatures based on personally identifiable information. According to cyber security expert Babak Pasdar, "The program is implemented where servers exchange traffic between one another—in the heart of a network system rather than at the perimeter, which interfaces with the outside world. This is similar to a home security system that only monitors the central interior of a house, rather than keeping an eye on the actual doors." As a result, cyber security experts argue that Einstein 3 may "offer no intrinsic security value."[34]

Similar to the role the military services played in assisting domestic recovery efforts after Hurricane Katrina and the 2010 Gulf of Mexico oil spill, CYBERCOM envisions its task as helping secure domestic and civilian electronic networks that are currently at risk. Once tested, the NSA and DHS plan on extending their cyber security systems to key private networks deemed critical to national security. According to Deputy Defense Secretary William Lynn (2010), "We are already using our technical capabilities…to protect government networks. We need to think imaginatively about how this technology can also help secure a space on the internet for critical government and commercial applications." Lynn is pushing to establish a hacker-free, online space for both government and civilian purposes. Faced with growing risks inherent in using the internet, Lynn suggests that private companies and citizens will jump at the opportunity to opt-in to secure government networks in the face of the "wild west of the unprotected internet."[35]

DHS is moving quickly to help secure commercial networks too. Jason Healey, director of the Atlantic Council's cyber statecraft initiative explains that the DHS plans to place the "government at the center of the Web," adding, "If we're going to make progress... we have to treat the private sector as the supported command, not as the supporting command."[36] The DHS is rolling out Einstein 3 with civilian federal agencies now, but is also planning on targeting industries outside the federal government considered critical elements of the nation's infrastructure.[37]

Former CYBERCOM and NSA Director Alexander clarified that securing private networks could not be achieved through voluntary mechanisms alone: "Recent events have shown that a purely voluntary and market driven system is not sufficient. Some minimum security requirements will be necessary to ensure that the core, infrastructure is taking appropriate measures to harden its networks."[38]

Industries considered critical to national security continue to expand given the impact that an attack on almost any industry would have on the economy, thus providing rationale for government securing large parts of the internet. Telecommunications is already considered a critical industry, but increasingly, so is the intellectual property sector. According to Deputy Secretary of Defense Lynn, "The threat to intellectual property…may over the long term be the most significant cyber threat our nation faces."[39] Americans aren't necessarily opposed to securing networks from intellectual property theft, with a majority supporting penalties for downloading copyrighted music and movies.[40] Yet, securing telecommunications and intellectual property sectors with military-grade technology would allow for the vast majority, if not all, of the internet connections in the US to be monitored, analyzed, and their data archived in real-time. Such

34 Quotes from the previous two sentences are from: Jesselyn Radack, "NSA's Cyber Overkill," *Los Angeles Times*, July 14, 2009.

35 W. J. Lynn, "Remarks at Stratcom Cyber Symposium," Stratcom Cyber Symposium, Omaha, NE, May 26, 2010, http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1477.

36 Arie Church, "Beyond Government Defending Itself," The Air Force Association, *Air Force Magazine*, 2012, http://www.airforce-magazine.com/DRArchive/Pages/2012/March%202012/March%2023%202012/BeyondGovernmentDefendingItself.aspx.

37 Jason Miller, "DHS Buys Software as Part of Einstein 3 Deployment," *Federal News Radio*, 2011, http://www.federalnewsradio.com/?nid=473&sid=2684411.

38 Keith Alexander, "Letter to Hon. John McCain, Ranking Member, Committee on Armed Services, United States Senate," 2012.

39 Lynn, "Remarks."

40 American Assembly at Columbia University, "Copyright Infringement and Enforcement in the US," Research Note, November 2011, http://piracy.americanassembly.org/wp-content/uploads/2011/11/AA-Research-Note-Infringement-and-Enforcement-November-2011.pdf.

an effort could also be described as, using Briggs and Burke's term, "total information control."

Conclusion

Charles Darwin is credited with the idea that it's not the strongest of species that survive, nor the most intelligent, but those most adaptable to change. This chapter explores three case studies whereby governments endeavor to better control domestic information flows for self-preservation. The results indicate that it's not only species that need to adapt to survive, but states too. China, Egypt, Denmark and the United States each implement control—through law, technology, subsidy, and force—over domestic internet space in an effort to strike a balance between integration into the information society and maintaining sovereignty over domestic information flows. The specific purposes of each state's efforts differ in important ways, but align in that each strategy represents an effort at re-asserting control over global information flows. While each strategy may not be as effective as another, pragmatists must recognize the two trends: (1) By adopting a broader understanding of "control," states have become quite effective at managing information flows; and (2) multifaceted efforts that move beyond merely restricting access are increasingly seen as legitimate among non-specialized publics.

These trends help to explain frustrations surrounding the outcome of NETmundial, as well as the WSIS+10 HLE. In both cases, civil society groups participated but, to a large extent, felt state interests drove the final outcomes.[41] Their frustration reflects the simple fact that governments are in the driver's seat, controlling the resources and authority to regulate parts of the World Wide Web, including the non-government organizations responsible for overseeing its day-to-day operations (ARIN, ICANN, etc.). Given the competitive nature of international ICT industries, and their close ties to internet-related civil society groups, it is difficult to imagine the emergence of a globally united civil society capable of challenging the re-emergence of states in the internet governance space. There is hope, and need, for greater action at the local and national levels. Thus, it may be helpful for IGF participants to focus discussions on questions at the heart of this debate, including: (a) what exactly has the forum done to check and monitor state efforts to re-assert control over various aspects of the web?; (b) What can be done to strengthen elements of the forum that are effective in holding practitioners accountable?; and (c) Would the resources spent organizing and participating in the IGF be more effectively allocated to challenge specific state efforts to increase control over digital communications? While not every IGF delegate will welcome this final question, it is a crucial one. Participation in multistakeholder fora, like NETmundial and the IGF, do not necessarily benefit civil society groups unless they are able to win clear and actionable concessions from governments and the private sector. Historically, powerful actors engage in multistakeholder negotiations when they need legitimacy and/or expertise to govern properly. Thus, civil society groups need be careful to avoid participating in meetings that merely legitimize the status quo, allowing state actors to remain in the drivers seat moving forward.[42] This question is not only relevant to the ongoing internet governance debates, but also broader discussions about the World Summit on the Information Society (WSIS), a topic the UN will revisit in 2015.

41 Shawn Powers (2014) "WSIS+10: Connected, and Unprotected." CGCS Media Wire, June 20, http://cgcsblog.asc.upenn.edu/2014/06/20/wsis10-connected-and-unprotected/

42 For more, see: Shawn Powers and Michael Jablonski, *The Real Cyber War: A Political Economy of Internet Freedom* (Urbana, IL: University of Illinois Press, 2015), chapter 6, "The Myth of Myth of Multistakeholder Governance."

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Creating a Global Internet Public Policy Space: Is There a Way Forward?

Marilia Maciel

The Historical Context

Why is there such a pressing effort to find alternative modes, globally, to fashion internet policy? One must start with a simple observation: states have been considered the main political actors in international politics. Their borders gave origin to the internal/external binomial and to the division between domestic and foreign policy. The domestic playing field would be the space where history, identity and a community of destiny could flourish, allowing individuals to engage in a public sphere as equal citizens to work to define common goals and the best way to pursue them. This space was separated from the external arena, traditionally characterized by anarchy, potential conflict and insecurity.

As a consequence, the state has been regarded as the ideal space in which public policies should be developed. On the one hand, public policies relate to issues that go beyond the private sphere; they pertain to a domain that should be held in common. On the other hand, public policies embody an assessment that a society makes about itself and about what should be changed or upheld. They are social constructions, shaped within a cultural context that influences how public problems are interpreted and addressed. State bureaucracy would work to solve issues framed as public problems.

By the end of the twentieth century, the acceleration of a multi-dimensional process of globalization emphasized some of the cracks in the foundation of this theoretical building. On the state level, economy, politics and socio-cultural practices are being transformed. The flow of capital became faster and insensitive to borders while, in parallel, the process of production was de-territorialized and fragmented worldwide. Identity and inclusion are increasingly defined through consumption, and this affects the way citizens perceive the public interest and the role of politics. It becomes harder to maintain the boundaries that are necessary for the efficient "packing" of public or collective goods and to measure what is the preferred state of affairs.[1]

Traditional institutions involved in policy development, such as states and international organizations, have lacked the capacity to deal with many public problems. This is partially related to the fact that, while the state is considered the primary space for policy-making and the juridical cornerstone of existing international institutions, there are a variety of other actors that currently play a role in the development and implementation of policies. Denser interdependence among states takes place in parallel to the growth of networks, where policies are shaped by a diverse group of players who act not only below, but also above and cutting across states' boundaries. Traditional concepts of public policy seem outdated and disconnected with this complex reality.[2]

Internet governance arrangements emerged in this historical context and were influenced by it. Activities carried out by non-governmental actors on a day-to-day basis have a direct or indirect impact on policy development. The key role of non-governmental actors in internet governance is a reflection of the integral role these actors played in the development of the internet. This distinguishing characteristic engendered flexible and distributed governance arrangements, based on a "web of relationships."[3] Multistakeholder networks have been perceived as an efficient model for internet governance because they could identify softer and speedier approaches to policy-making and regulation. As recognized by the Brazilian government, "the importance of the multistakeholder dimension in the

1 Philip G. Cerny, *Rethinking World Politics: A Theory of Transnational Pluralism* (Oxford University Press, 2010), 98.

2 According to Thoening, for instance, public policy is "the intervention of an authority that has public power to do it and governmental legitimacy over a specific domain of society or of the territory". Jean-Claude Thoening, "Politique Publique". In Laurie Boussaguet et al., *Dictionnaire des politiques publiques*, (Presses de Sciences Po, 2004), p. 326.

3 Vinton Cerf et al. "ICANN's role in the Internet Governance Ecosystem", report of the ICANN Strategy Panel, (ICANN, 2014), https://www.icann.org/en/system/files/files/report-23feb14-en.pdf

development of public policies cannot be overstated as in some cases, actions taken by other stakeholders may prove to be more effective to achieve goals set in public policies than the mere issuance of regulation by governments."[4]

Nevertheless, as the internet grows and becomes the primary environment for all forms of human interaction, contradictory policy options naturally emerge, reflecting the diversity of interests in society. The lack of clear procedure for coordinating policy choices and making decisions among a diversity of global actors puts pressure on distributed governance arrangements and gives strength to calls for institutional improvement.

Moreover, there is a widening gap between territorially anchored democratic processes and cross-border networks[5] where policies are shaped in a way that evades traditional democratic control. Certain frequently used terms, such as *networks*, *governance* and *regime,* have disguised relations of authority and power asymmetry among actors, de-politicizing the topic. Internet governance is structured around a managerial lexicon, in which efficiency is the key word.

This democratic deficit takes place in parallel to a separation between a segment of the world population that is increasingly bound to the territory and those whose freedom of movement and information have been strengthened by globalization.[6] In such a context, it is possible that those who harness the benefits of globalization will be the ones populating cross-border policy networks.

Combining the advantages, expertise and flexibility of existing networks with democratic practices is one of the major challenges of cross-border policy development. This tension is present in the discussion about institutional arrangements for internet governance.

4 Brazil, Ministry of External Relations, Division for the Information Society, *Contribution to the WGEC questionnaire on enhanced cooperation*, 2013, http://unctad.org/Sections/un_cstd/docs/WGEC_Brazil_Gov1.pdf

5 Policy networks could be understood as a set of stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that cooperation is the best way to achieve common goals. Tanja A. Börzel, "Organizing Babylon – on the different conceptions of policy networks", *Public Administration,* 1998, 76: 233–73.

6 Zygmunt Bauman, *Globalization: The Human Consequences*, (Polity Press, 1998), p. 3.

Internet-related Policies and the Future of the WSIS

The initial discussions about institutional arrangements for internet policy-making took place at the World Summit on the Information Society (WSIS). Policy-making is one of the themes encompassed by the Tunis Agenda, adopted in 2005 at the second phase of WSIS.[7] The document asks for the creation of the Internet Governance Forum (IGF), an institutional space for the discussion of global public policies related to the internet (paragraph 72). It also deals with decision-making, mentioning the need "for enhanced cooperation in the future to enable governments, on an equal footing to carry out their roles and responsibilities in international public policy issues pertaining to the Internet (…)" (paragraph 69).

The IGF was created in 2006, but controversy remains on the meaning of enhanced cooperation. Opinions were polarized between actors who argue that enhanced cooperation would mean improved communication within the network of actors and institutions dealing with internet governance and those who believe it would entail the creation of a centralized mechanism that would allow governments to make policy decisions in consultation with other stakeholders.

The Tunis Agenda seems to confer to governments a differentiated responsibility in the field of policy development, when it mentions that "policy authority for Internet-related public policy issues is the sovereign right of States (paragraph 35, a)." This right is not unbridled; it is limited by the commitment to involve all relevant organizations and all stakeholders in their respective roles (paragraph 71). However, the definition of the roles and responsibilities of non-governmental actors is vague and falls short of their actual involvement in policy development (paragraph 35, b to e). The Tunis Agenda provides little guidance on concrete ways to put in place an institutional architecture for internet governance.

The fact that there is no single space for decision-making on internet-related policy issues does not mean, however, that regulation, policy development and harmonization are not being carried out. On the level of infrastructure, cables are operated by private companies with a few giants setting the rules for interconnection through agreements for transit or peering. These agreements have great impact on the cost of international connectivity and on policies aiming to provide access to the Internet.

7 *Tunis Agenda for the Information Society*, (ITU, 2005), http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

In the field of technical standards, "private institutions made up primarily by individuals working for private industry make most Internet governance decisions, including designing protocol."[8] The importance of standards to policy development should not be downplayed. Different choices of standards may uphold or undermine certain values and rights, such as the right to privacy, for example. In the field of applications, online platforms and social networks create policies that impact the lives of consumers by means of their terms of service. Fundamental rights, such as freedom of expression and privacy, are affected by pre-formulated and non-negotiable private contracts that extend across jurisdictions.

In addition to these levels of influence, there is an increasing association between governments and the private sector to carry out policy implementation and online enforcement, not always conducted with due transparency. Among other examples, governments request information from ISPs and applications to ascertain someone's identity, to ask them to remove potentially unlawful content and on occasion to request ISPs to examine the content of packets to look for infringing content or to block specific users.

Governments have privatized online enforcement because they usually lack the means to carry out this activity without private collaboration. All states, however, do not have the same capacity to put pressure on private actors to act as proxies for policy implementation and enforcement. This ability is deeply related to a state's power to exert jurisdiction over these actors. Most of the telecommunication companies, domain name registries or social networks that operate globally are subject to a few jurisdictions. Because these countries can force private actors to comply with national regulation, their capacity to influence regulatory trends and to carry out enforcement expands across borders. The cooperation of major companies, such as Facebook, Google and Microsoft with the NSA data mining program is an example of that. For the other countries of the world, lack of jurisdiction creates barriers for enforcement of internal law and court orders. The Mutual Legal Assistance Treaties (MLATs) have proven to be an outdated mechanism to address these concerns.

Demands for increased transparency, openness and participation in internet policy have mostly targeted international organizations. These demands should also be expanded to other areas of policy development that are kept outside wider scrutiny, under the justification that they are purely technical; that they are part of business decisions that should be made by private companies alone; or that they are national security issues, a label that is being applied indiscriminately by many governments, without the possibility of discussing its underlying criteria.

Policy development in the field of internet governance is conducted without clear procedures for coordination and for providing accountability and democratic control. This happens not only because of the cross-border nature of the internet and of policy networks, but also because of the way issues of public interest are framed as private ones.

Current proposals for institutional improvement that aim to create a centralized space for policy decision-making should be understood against this backdrop. Firstly, they can be seen as an attempt to place internet policy development under democratic control that would be anchored on the traditional and still widely accepted idea that states' representatives can legitimately voice the concerns of their people. Secondly, they aim to place all countries on an equal footing in policy development, mitigating the disproportionate influence that some states have on private actors, mostly because of their capacity to exert jurisdiction.

This understanding is consistent with positions adopted by many developing countries that have been asking for a "multilateral, transparent and democratic governance of the Internet." This expression emerged for the first time during the Regional Ministerial Preparatory Conference of Latin America and the Caribbean for the WSIS, as part of the Bávaro Declaration[9]. It was adopted by the Arab countries, the Like Minded Group (LMG) and by IBSA (India, Brazil, South Africa). The Brazilian representative at WSIS explained that "by democratic we mean the fullest practicable participation of all stakeholders, particularly governments, in the present system of Internet governance (…) By multilateral, we mean a forum that allows for the representation of sovereign states on an equal footing (…) Finally, transparency implies an accountable decision-making process open to the participation of all stakeholders and subject to the control of society at large."[10]

Since the implementation of enhanced cooperation remains stalled, many countries that are not

8 Laura DeNardis, *Protocol Politics: the globalization of Internet Governance,* (The MIT Press, 2009), pos. 1079.

9 *Bávaro Declaration*, (Conferencia Ministerial Regional preparatoria de América Latina y el Caribe para la Cumbre Mundial sobre la Sociedad de la Información, 2003), http://www.cepal.org/prensa/noticias/noticias/9/11719/Bavarofinalesp.pdf.

10 Brazilian statement on the occasion of the meeting that constituted WGIG, http://lac.derechos.apc.org/wsis/cdocs.shtml?x=26796.

satisfied with the *status quo* of internet governance arrangements started to introduce the discussion of policy issues under existing international organizations, notably in the International Telecommunications Union (ITU). Substantive topics, such as security issues, have been frequently introduced in the ITU's agenda. During the World Conference on International Telecommunications (WCIT) in 2012, a non-binding resolution about the internet has been included in the annexes of the International Telecommunication Regulations (ITRs), further blurring the lines between telecommunications and the internet. In the ITU's World Telecommunication Policy Forum (WTPF) in 2013, Brazil raised the discussion about "the role of Governments in the multistakeholder framework for Internet Governance."

There was a missed opportunity to reach agreement on the implementation of enhanced cooperation in a multistakeholder way. Nine years after WSIS there was the creation of a Working Group on Enhanced Cooperation (WGEC) under the UN Commission on Science and Technology for Development, which aimed to make recommendations on how to proceed.[11] However, the working group did not manage to bridge diverging views.[12] The next significant opportunity to discuss internet governance institutional architecture and policy development will be the process towards the WSIS +10 in 2015.

In the face of persisting deadlocks, the usefulness of the Tunis Agenda is being contested. Actors involved in the internet governance debate will need to make a choice. In general terms, they could decide that the Tunis Agenda should be superseded by another text, decide that the text should be abandoned or discuss how to implement the Tunis Agenda.

Good arguments can be presented to support the launching of a full scale WSIS review. Firstly, WSIS outcome documents did not fully meet the expectations of developing countries with regards to substance, and some actors believe more could have been achieved regarding communication rights at WSIS. Most importantly, the controversy about internet governance frameworks has consumed resources without major breakthroughs. The fact that WGEC fell short on its mandate strengthened the proposals calling for a new summit, such as the resolution presented by Russia in CSTD and the resolution delivered by Fiji on behalf of the G77 plus China in the General Assembly.[13]

In July 2014, a UN resolution about the goals and modalities for participation at WSIS +10 was approved.[14] In June 2015, an intergovernmental negotiation process will be started in informal consultation with other relevant stakeholders. It will lead to an intergovernmental outcome document for adoption at a high-level meeting of the General Assembly in December 2015. These negotiations are unlikely to be easy. In addition to the historic divergences that have characterized internet governance discussions, international cooperation is currently facing a downturn, if compared to the context in which WSIS took place ten years ago. Many countries are still suffering the effects of the economic crisis. There are budgetary constraints and many international negotiations are stalled or showing little signs of progress. There is no clear indication that a new summit could produce a better text. Maybe the opposite is even more plausible.

An example of the current difficulties to cooperate was the WSIS+10 High-Level Event, held in June 2014, which aimed to review the WSIS outcomes and develop new targets beyond 2015. The event produced extensive but vague outcome documents.[15] In spite of the existence of a Multistakeholder Preparatory Platform (MPP) that held six preparatory meetings before the High-Level Event, compromise was achieved in last minute intergovernmental negotiations. Moreover, the most controversial points related to the Tunis phase of WSIS were agreed to be left out of the document, including issues related to internet governance. It remains to be seen if the 2015 outcome document will achieve more substantive progress.

The option to abandon, either explicitly or tacitly the Tunis Agenda – by selectively implementing some paragraphs and leaving others in a limbo, for instance – does not look promising either, as it could create political rifts that would become very difficult to bridge. Moreover, in a challenging moment for global

11 *Information and Communications Technologies for Development*, resolution A/RES/67/195, (General Assembly, 2012), paragraph 20, http://unctad.org/en/PublicationsLibrary/ares67d195_en.pdf

12 *Analysis of the Responses to the Questionnaire of the UN Commission on Science and Technology for Development* (WGEC, 2014), http://unctad.org/meetings/en/SessionalDocuments/WGEC_Summary_of_Responses.pdf

13 *Information and communications technologies for development*, resolution A/C.2/68/L.40, (General Assembly, 2013), http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N13/552/87/PDF/N1355287.pdf?OpenElement

14 *Modalities for the overall review by the General Assembly of the implementation of the outcomes of the World Summit on the Information Society* (General Assembly, 2014), http://www.un.org/ga/search/view_doc.asp?symbol=A%2F68%2FL.54&referer=%2Fenglish%2F&Lang=E

15 *WSIS+10 Statement on Implementation of WSIS Outcomes*; *WSIS+10 Vision for WSIS Beyond 2015*, (ITU, 2015), http://www.itu.int/wsis/implementation/2014/forum/inc/doc/outcome/362828V2E.pdf

cooperation and multilateralism, undermining support to one of the key international texts that deals with the information society would be a reckless move. Although some topics could have advanced more, the WSIS outcome documents are people-centered, place great importance on development and uphold freedom in its largest sense. It is a good foundation document to advance agendas that are important to countries all across the political spectrum.

The third option to be considered is how to implement the Tunis Agenda. *Pacta sunt servanda* is a basic principle that guides not only international relations but also private law. Agreements must be kept. This principle is fundamental for stability, legal predictability and trust. Nevertheless, all agreements are celebrated based on context and facts known at the time of the negotiation. This implies that they should be implemented *rebus sic stantibus*, i.e. in the absence of substantial, fundamental change. But much has changed and has been learnt in the past ten years. The most reasonable solution is to revisit the Tunis Agenda and discuss its implementation by making the necessary adjustments and compromises to update it to present challenges.

Centralized and Distributed Proposals for Institutional Arrangements

Different views about the meaning of enhanced cooperation gave birth to concrete proposals of institutional mechanisms for decision-making on internet policy issues. One of the strengths of centralized models is the procedural clarity they could provide. The usefulness of a one-stop-shop that could serve as a point of entry to internet policy-making has been pointed out since WSIS. Particularly for developing countries, "fragmentation of policy spaces, among other factors, greatly undermines the ability of under resourced groups to engage with global Internet governance, because they are unable to be present in all places."[16]

One example of a centralized proposal was put forward by the government of India for the creation of a United Nations Committee for Internet-Related Policies (CIRP).[17] The CIRP proposal was tabled at the 66th UNGA. It would mainly develop and establish international public policies, facilitate the development of treaties and would coordinate and oversee the bodies responsible for technical and operational functioning of the internet, including global standards setting. The Committee would be composed of 50 Member States chosen on the basis of equitable geographical representation. The participation of other stakeholder groups would be advisory in nature and be channeled through four advisory groups, one each for civil society, the private sector, inter-governmental and international organizations, and the technical and academic community. CIRP seems to fall under the category of a traditional intergovernmental body.

The Brazilian government supports a less well-defined centralized model embodied in the creation of a "single convergent space or platform (…) for dealing with the diverse kinds of international public policy issues pertaining to the Internet in general." Nevertheless, the country emphasizes that "this platform should be respectful of the multistakeholder model, with the full involvement of governments, the private sector, civil society and international organizations."

Unlike what India did with CIRP, Brazil does not go as far as suggesting a concrete institutional design. It just mentions that "the structure of such new platform itself should emerge from the multistakeholder debate." Brazil is moving forward very carefully and justifies its decision not to propose any concrete mechanism in the following manner: "the discussion of any suitable framework or mechanisms should be guided by the purpose of addressing perceived needs or filling gaps and should only be undertaken when there is some comfortable margin of support for these ideas. In other words, Brazil proposes first to deepen discussion on WHAT we want before discussing HOW to achieve what we want."[18] The country seems to be adopting the principle that "form follows function."

In parallel to the centralized models, there are others that show different degrees of decentralization. Some of them try to combine elements of intergovernmental legitimacy with the flexibility of networks. During WSIS, Wolfgang Kleinwächter proposed a multilayer and multiplayer mechanism of consultation, coordination and cooperation (M3C3). The point of departure of this proposal was the need to foster both intergovernmental harmonization and non-governmental self-regulation through networks. One should not be superseded by the other, but achieve complementarity by means of a co-regulatory model.[19]

16 Brazil, Ministry of External Relations, Division for the Information Society, *Contribution to the WGEC questionnaire on enhanced cooperation*, 2013, http://unctad.org/Sections/un_cstd/docs/WGEC_Brazil_Gov1.pdf

17 India, *Proposal for a United Nations Committee for Internet-Related Policies,* (UN General Assembly, 2011), http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf

18 Brazil, Ministry of External Relations, op. cit.

19 Wolfgang Kleinwächter, "Internet Co-governance: towards a

More recently, Kleinwächter revisited his proposal. He suggested that a "Multistakeholder Internet Policy Council" (MIPOC), linked to the IGF, could function as a policy clearing house. The Council would discuss how to proceed with IGF outcomes and recommend that existing intergovernmental or non-governmental organizations include the issues in their agendas. For new and emerging issues that do not find a home in existing organizations, MIPOC could also start a bottom up policy development process.[20]

This proposal has some similarities with the one put forth by Anja Kovacs on behalf of the Internet Democracy Project. She suggested the creation of a global body that could function as a non-decision making clearing house. Its role would be to identify policy issues and send them to multistakeholder networks of actors with expertise to deal with them.[21] If the issue identified happens to fall under the scope of a WSIS action line, the international organizations that are action line facilitators could convene the multistakeholder network to address it. The networks would, therefore, take advantage from the knowledge already produced in the WSIS process. In general, these networks could adopt two approaches: to tackle the policy issue themselves or to delegate it to other body. For example, if an international treaty is needed, the issue would be delegated to the international organization with mandate to deal with it.

Moreover, involving international organizations as key facilitators of the multistakeholder networks may enhance governmental involvement, increase the legitimacy of the process and strengthen the commitment of international organizations with the outcome of network discussions. Therefore, if the issue is eventually taken to a multilateral body, chances are that the discussions carried out in the networks will percolate and have a larger impact on intergovernmental discussions.

Up to the present moment, the decentralized proposal presented by Kovacs seems to be the one that best tries to reconcile intergovernmental and multistakeholder spaces. Nevertheless, there are still points that need to be enhanced for this proposal to address the concerns that underlie the calls for improving institutional aspects of internet governance, particularly those that relate to transparency and democratization.

First of all, Kovac's proposal does not address the possibility of political capture in distributed arrangements, which usually lack clear rules of engagement. It would be necessary to ensure that participants of the networks represent the diversity of views in their own stakeholder group. So far, bottom-up selection and self-organization have mostly translated into larger participation of men from developed countries. Civil society, business companies and technical actors from developing countries, as well as cross-cutting groups, such as women, still remain less involved in governance arrangements.

Secondly, the proposal does not address the concerns of developing countries related to the fragmentation of policy spaces; it in fact leads to an increase of the points of entry to the internet governance debate. Regarding this point, Kovacs expresses the opinion that it is currently hard to have a clear perception of how participation in internet governance would benefit developing countries "because existing processes tend to address a hotchpotch of issues." Her argument is that "a distributed structure of Internet governance with well-defined aims and purposes will resolve this problem as it will make it much more obvious to developing country actors (as well as others) which processes are worth their time."

The danger with this reasoning is that it departs from the idea that it is acceptable that actors are forced to choose, due to their scarce human and financial resources, to follow-up policy discussions about issues as different as access to infrastructure and privacy, for example. If developing countries remain discussing only a few topics, most important decisions will already be made for them when they start to have resources to follow the other issues.

Lastly, Kovac's proposal mentions that the decision-making power among stakeholder groups that are part of the networks would be distributed: no group alone could make decisions. Nevertheless, it is not clear if a single stakeholder group could block decisions. Considering the high degree of divergence on some issues, such as privacy, conversations could become stalled, undermining the alleged efficiency of the model. It should be remembered that lack of action is not a neutral position: ultimately, inaction can be characterized as action because it has public

multilayer multiplayer mechanism of consultation, coordination and cooperation (M3C3)," (XXX, 2006), http://www.wwwords.co.uk/pdf/freetoview.asp?j=elea&vol=3&issue=3&year=2006&article=18_Kleinwachter_ELEA_3_3_web.

20 Wolfgang Kleinwächter. *Internet Governance Outlook 2014: Good News, Bad News, No News?* (CircleID, 2013), http://www.circleid.com/posts/20131231_internet_governance_outlook_2014_good_news_bad_news_no_news/

21 Anja Kovacs, *A Third Way? Proposal for a Decentralized, Multistakeholder Internet Governance Model*, (Internet Democracy project, 2013), http://internetdemocracy.in/reports/a-third-way-proposal-for-a-decentralised-democratic-internet-governance-involving-all-stakeholders/

consequences, reinforcing the *status quo* and the wave of events already in motion.[22]

Another important point to consider is that the main distributed proposals that have been tabled do not address the need to increase the accountability of private actors who already perform internet governance functions. CIRP mentions the need for oversight of standard-setting organizations. The European Commission recently stressed the need to create or strengthen mechanisms "to allow regular, early and truly inclusive upstream participation, review and comment in technical decisions."[23] Nevertheless, the most innovative and detailed proposals that emerged from civil society leave areas such as standards-setting untouched.

NETmundial: A Game Changer?

The Global Multistakeholder Meeting on the Future of Internet Governance (NETmundial) was held on April 23rd and 24th 2014 in São Paulo, Brazil.[24] The event was organized by means of a partnership between the Brazilian Internet Steering Committee (CGI.br) and 1 Net, a coalition that gathers actors from the stakeholder groups involved in internet governance discussions.
Revelations of mass surveillance of communications were a catalyst to the decision of convening NETmundial, although the issue was not prominently included in the scope of the meeting. In September 2013, President Dilma Rousseff gave a speech at the opening of the 68th Session of the United Nations General Assembly, in which she criticized policies of mass surveillance. The President also mentioned the need to develop a framework for the governance and use of the internet and to create mechanisms to ensure basic principles are guaranteed, such as privacy, freedom of speech and net neutrality. In the following month she received the visit of Fadi Chehadé, Chief Executive Officer of ICANN. After their conversation the global meeting was jointly announced.

NETmundial aimed to address two problems, which directly inspired its agenda items: the need to identify a set of universally acceptable internet governance principles and the need to propose a way forward for the evolution of the internet governance ecosystem. In addition to these explicit goals, the convening of NETmundial – a new event in an already consolidated agenda of internet governance meetings and fora – attests to the existence of a gap. There is currently no multistakeholder global space where actual decision-making could be carried out. From the outset, the meeting was convened under the expectation that it should present conclusions and a concrete outcome.
Some steps forward were made in discussions about the evolution of the ecosystem in the NETmundial outcome document. The direct and indirect references to the Tunis Agenda corroborate the relevance and legitimacy that the document still garners. This should be taken into account in the negotiations towards WSIS+10 in 2015. The outcome document reinforces that actors have different roles and responsibilities in policy development, but it also rightly adopts the understanding that "the respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion". [25] To achieve a compromise with actors who would like to override the idea of different roles and responsibilities encompassed in the Tunis Agenda, the outcome document acknowledges that further discussion is still needed on "different roles and responsibilities of stakeholders in Internet governance, including the meaning and application of equal footing."

NETmundial also demonstrated wide support for strengthening the IGF by implementing the recommendations of the CTSD working group on IGF improvements, paying special attention to improving the outcomes of the meeting, ensuring stable and predictable funding, adopting mechanisms that would allow inter-sessional work and extending IGF's mandate beyond five years.

No breakthrough was made regarding enhanced cooperation. The document only mentions that it must be implemented on a priority and consensual basis. Reaching consensus on the topic has proven to be particularly difficult. Nevertheless, the NETmundial outcome document innovates when it expresses preference for a distributed model for internet governance, elevating it to the status of a principle. It mentions that "Internet Governance should be carried out through a distributed, decentralized and multistakeholder ecosystem." Nevertheless,

22 Benjamin Barber, *Strong democracy. Participatory politics for a new age.* (University of California Press, 1984), p. 123-4.
23 European Commission, *Internet Policy and Governance Europe's role in shaping the future of Internet Governance*, COM (2014) 72 final, (European Commission, 2014), p. 9.
24 NETmundial, http://www.netmundial.br/
25 DeNardis and Raymond have called attention to the dangers of seeing multistakeholderism as a teleological goal or as a value in itself, when it should rather be one possible approach to meeting public interest objectives such as preserving interoperability, stability, security and openness. Moreover, for different issues, there can be different governance settings that can more efficiently preserve those core values. Laura DeNardis; Mark Raymond. *Thinking Clearly About Multistakeholder Internet Governance*, (SSRN, 2013), http://ssrn.com/abstract=2354377

the organizations that are part of this ecosystem need to enhance communication and coordination. Actors should consider the option of creating internet governance coordination tools to perform monitoring, analysis, and information-sharing functions.

The document admits the possibility that new mechanisms should be created to take into account emerging topics and issues that are not currently being adequately addressed by existing internet governance arrangements. A detailed mapping of internet governance issues has been started by a group of volunteers assisting WGEC and it is important that this work is meticulously reviewed and concluded.
Finally, the outcome document seems to recognize that there is a deficit of democracy and accountability in current governance arrangements. It acknowledges the importance of improving multistakeholder decision-making and policy formulation, and presents several calls to reinforce transparency, accountability and participation in governance networks. It suggests, for instance, that all of the organizations with responsibilities in the internet governance ecosystem should develop and implement principles for transparency, accountability and inclusiveness, prepare periodic reports and make them publicly available.

An interesting development after NETmundial was the announcement by ICANN of a "NETmundial Alliance," later called "NETmundial Initiative." In general terms, the aim of the initiative would be to develop concrete ways to apply the principles of NETmundial and to enable a distributed approach to internet cooperation and governance through innovative and legitimate mechanisms.

The initiative will be based of the outcome document of NETmundial and on the Report "Towards a Collaborative, Decentralized Internet Governance Ecosystem"[26] produced by the High Level Panel (HLP) chaired by president Toomas Ilves of Estonia and supported by ICANN and the World Economic Forum (WEF). On the level of promoting dialogue, the initiative aims: to foster exchanges about policy-issues by a network of interdisciplinary decision-makers and constituents; to encourage the creation and cross-level synchronization of governance arrangements on the national, regional and global level and to support discussions through the IGF. On the level of concrete action, it aims to map internet governance issues and link them to their respective solution; to make actors coalesce around distributed groups (section II, A of the report) and to provide capacity development.

The Ilves report raises some interesting concrete suggestions of how a distributed model could function. It follows a similar direction of other distributed mechanisms that have already been proposed (see section 3) and suffers from similar shortcomings when it comes to transparency, accountability and inclusion.

So far, there is little clarity about the initiative and about the actors who are expected to be the main driving forces behind it. Invitations to join the initiative have been made on a case-by-case basis. It seems that, for the moment, the main goal is to galvanize the support of key governments and of a selective group of non-governmental actors.

The NETmundial Initiative should be understood in the broader context presented so far. It seems an attempt to counter-balance tendencies of creating a centralized model for internet governance or to further develop structures that would work under the United Nations. There is no sign that the members of the HLP took into account the large amount of information produced by WGEC, for example. If this assessment is correct, it is curious that developing countries such as Brazil and China have agreed to take part in this effort.

If successful, this could mean a decisive move away from intergovernmental forms of legitimizing policy-making towards a model that promises efficiency and speedy decisions. Issues of legitimacy and democratic procedures are still unclear and being undervalued. In the Ilves report these issues have been listed as open questions to be discussed in a later stage. As it is gaining shape right now, the proposal would not address many of the concerns related to the democratic deficiencies of cross-border policy networks.

Conclusion

There is a widening gap between territorially anchored democratic processes and cross-border networks, where many internet policies are being developed. Institutional arrangements that place policy decision-making under the sole responsibility of states may be an attempt to address a real and important democratic deficit, but they ignore the interdependence among actors and the complexity of the internet governance ecosystem.

In the United Nations, discussions about the implementation of enhanced cooperation have made little progress. The next significant opportunity to discuss internet governance and policy development

26 "Towards a Collaborative, Decentralized Internet Governance Ecosystem." Panel on Global Internet Cooperation and Governance Mechanisms, 2014.

will be the process towards the WSIS +10 in 2015. Good arguments can be presented to support the launching of a full scale WSIS review, but recent meetings have shown that major breakthroughs are unlikely. During the stalemate of the last ten years, proposals for centralized and distributed governance arrangements have been put forth. In the present moment it could be useful to revisit them.

To counterbalance discussions in the UN, private actors have created panels and commissions to discuss internet governance institutional arrangements. The NETmundial initiative promises to build upon advancements made in the NETmundial outcome document. Nevertheless, the initial discussions seem far less inclusive than the NETmundial meeting and do not seem inclined to address democratic deficits of cross-border policy networks.

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Moving from the NETmundial of Today to the "NETmundial +" of Tomorrow

Nnenna Nwakanma

There is a level of insurance that comes with certainty. The FIFA World Cup is done and dusted in Brazil. Fans know that in the summer of 2018, they will be heading to Russia for the next edition and in 2022, it will take place in the gulf nation of Qatar. In the multistakeholder internet governance space, however, this is not the case, primarily because four years is a generation in the ecosystem and secondly, the model itself is continuously evolving.

We are certain that some lessons will persist as we step into the beyond, but we are also certain that entirely new paradigms will emerge in the next coming months.

Earlier Experiences to take into NETmundial +

Before NETmundial, there were several fora at which internet governance was the focus, some of which are still around today. Irrespective of whether they are coming to the end of their lifespan or ongoing, we can borrow a few lessons from them on our journey beyond NETmundial.

The first is the experience from the World Summit on the Information Society (WSIS). In its first edition in Geneva in 2003, and its second edition in Tunis, 2005, WSIS recognized the unique nature of the internet and the need to have all actors engaged in its governance. Its agenda adopted an Internet Governance Forum that is, in its operation, multilateral, multistakeholder, democratic, and transparent. The summit broke with the status quo in international governing and, engaging multilaterally with issues of global concern, is here to stay. Going beyond WSIS and NETmundial, it is key that internet governance stakeholders, as well as those engaged in other ICT-oriented policy processes, keep this principle in mind in their practices. It may well be possible to have processes that will still be run with the traditional multilateral process, but their resulting outputs will likely be highly disputed by actors in the ICT landscape.

Another lesson is from the United Nations Millennium Development Goals (MDGs).[1] In delineating eight goals and giving stakeholders 15 years to work on them, the UN set a precedent in "measurability" of development work. The yearly reports have proved efficient in depoliticizing the results achieved and have helped even more stakeholders at regional and national levels ramp up efforts towards achieving the goals. The 2014 report shows that considerable results have been achieved,[2] and the G8's cancellation of a portion of debt owed by Heavily Indebted Poor Countries to allow such funds to be redirected to development initiatives has also proved beneficial. There are two lessons we can learn from the MDG process: set clear goals with measurable objectives, and proactively support parts of the world whose challenges, if not overcome, will endanger collective success.

The Internet Governance Forum (IGF) also serves as a valuable example. Over its nine years of existence, the IGF's mandate as a multistakeholder meeting for policy dialogue has strengthened. Though initially only a five-year mandate, the IGF has shown consistent efforts in building on its directives from WSIS, and stakeholder buy-in at the IGF has increased, evidenced by the annual increases in proposed workshops, sessions and pre-conference events. Several other internet governance-related meetings have come out solidly in favor of extending and strengthening the IGF's role and capacities. The take away from the IGF example is to maintain focus on an agreed mandate, as well as the importance of managing a huge network on a lean secretariat, supported by volunteers, fellows and a dedicated Multistakeholder Advisory Group (MAG).

1 United Nations. "Millennium Development Goals and Beyond 2015." http://www.un.org/millenniumgoals/

2 United Nations. "Millennium Development Goals: 2014 Progress Chart." See: http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20Progress%20Chart_English.pdf

NETmundial: Lessons to take to NETmundial +

Convened by the Brazilian government, the Global Multistakeholder Meeting on the Future of Internet Governance marked a historical turn in the internet governance policy dialogue. The global excitement it generated is attributable not just to the subject matter. It may be linked to President Rousseff's famous speech at the United Nations General Assembly, on the heels of the Snowden revelations, which reverberated across the globe, and to the pre-World Cup fervor. Whatever the reasons were, it inspired unprecedented contributions, comments, and cooperation and resulted in an extremely successful internet governance meeting.

The NETmundial meeting was initiated amidst the need for more leadership in the internet governance (IG) space. The 2012 edition of the World Conference on International Telecommunications (WCIT),[3] which sought to review the International Telecommunications Regulations (ITRs), could not get a clear consensus among International Telecommunications Union (ITU) member states. The Snowden surveillance revelations raised a whole host of other issues among global stakeholders, and Brazil took up the mantle of leadership in calling on the world to come together on a common vision for the future of internet governance. It would have taken longer for the United Nations or any of its agencies to pull it off. Brazil's leadership has been strengthened by its own Internet Bill of Rights – Marco Civil. Though the law may not perfectly cover all human rights concerns, it does prove, beyond doubt, that Brazilians could work in an open, inclusive and participatory manner to address an issue on internet governance, and the efforts have resulted in Brazil's emergence as a leader in internet governance-related matters. Moving beyond NETmundial, we need more countries that can demonstrate this leadership and have the capacity to address important thematic areas: access and affordability, human rights, infrastructure, openness etc.

The secretariat of NETmundial was led by Brazil's Committee for the Management of the Internet – CGI.BR.[4] CGI.BR has been proactive in all of the nation's internet governance issues, explaining, perhaps, the overall leadership of the country at the international level. One of the major challenges with implementing IG decisions at national levels in many countries is the lack of a functional national entity. So far, internet governance discourses have largely remained a global issue, and moving beyond NETmundial might mean that countries would do well to organize viable information societies at the domestic level. Five days of meetings convened by the United Nations or a champion government will not in any way supplant the need for a free, open, inclusive and multistakeholder internet governance instance at a national level.

The NETmundial meeting could have tried to delve into a lot of topics at the same time, but a wise choice was made to stick to the principles of the road map. Though security and surveillance dominated the debates (and still do), the meeting elected to be focused, and while this may not have satisfied all stakeholders, it helped focus the meeting and in turn, the output. NETmundial recognized many key issues that influence internet governance that are in dire need of addressing in the next appropriate forum, including:

- Different roles and responsibilities of stakeholders in internet governance, including the meaning and application of equal footing;
- Jurisdiction issues and how they relate to internet governance;
- Benchmarking systems and related indicators regarding the application of internet governance principles; and
- Net neutrality.

Moving beyond NETmundial, we may benefit from this principle of focusing on a limited number of issues per year with a clear plan for following up on them, along with a roadmap for the future issues to be dealt with at the next convening.

The meeting's principle of openness encouraged 188 contributions from 46 countries which made up the first draft which was also opened for comments. In just one week, 1,370 comments on the draft document were received by the organizers, and these contributions and comments are still available for reference purposes months later.[5] In most current global internet governance instances, this is largely a replicable process, however, at regional and national levels, this is not widely practiced. Moving beyond NETmundial, it is advisable to adhere to this principle of being open to ideas and contributions, as well as have the intellectual fortitude to accept comments on drafts.

Given the short time in which NETmundial was organized, perhaps its most important takeaway is on remote participation. Brazil used a platform that it had

3 International Telecommunications Union. "World Conference on International Communications." http://www.itu.int/en/wcit-12/Pages/default.aspx

4 The Comitê Gestor da Internet no Brasil is Brazil's Internet Management Committee.

5 NETmundial. "References." http://NETmundial .br/references/

tested in its national process, and the open call for hubs was an example of inclusiveness; the high participation proof of global interest. Thirty-one remote hubs from all continents were registered, three hubs from within Brazil itself. Ten of the international hubs were bidirectional, allowing not just for text contribution, but audio and video as well. According to the NETmundial secretariat, the bidirectional remote participation was only limited by the number of concurrent computers that could be placed in direct view of the plenary chair at a given time. Of special mention is the Arena NETmundial, hosted by the Cultural Center of São Paulo. The Arena was not just a remote participation hub; it was central to the event's networking and collaborative function. Panels of experts met with students, and grassroots organizers had an opportunity to join in musical concerts. The participants at the Arena also did daily debriefings of official NETmundial events. Engaged with the "Participa.br," Brazilians were vocal under the "Web We Want" campaign.[6]

As we move beyond NETmundial, it is key that we invest more in participation. There will always be physical and financial limitations to mass participation that mean reaffirming the importance of remote participation. NETmundial is an example of this being done very well and the CGI.BR is willing to help build capacity for countries who request. We must treasure this advancement.

New Paradigms Emerging

Though NETmundial elected not to have a discussion on security and surveillance, Snowden's shadow loomed large in Brazil, and looms large across the globe as online publics gain in awareness and reactivity to new knowledge on these fronts. The Marco Civil is just the beginning global demand for a web that is free, open, and respectful of human dignity, personal data, and individual privacy. Some stakeholders have opined that internet governance and internet users' security may not belong to the same policy basket. Whichever way this is eventually tackled, the clamor for internet rights and freedoms enshrined in a bill of rights, an 'internet Magna Carta,' will be on the rise. National laws on cyberspace security, anti-defamation, monitoring and interception of communications, and on cybercrime are also either on the rise or are shedding their shrouds and strutting in the open.

As the battles in the war for access and affordability are fought from country to country and barriers in policy, infrastructure, hardware and content are broken from place to place, the reward is an increase in online publics. As efforts like the Alliance for Affordable Internet (A4AI), the mobile revolution, Wikimedia, and social media are increasing, so too is the population of internet users, with positive effects for growth in e-commerce, web services and content marketing. However, the growing population also begets more governance challenges: how do we tackle critical internet resources, data protection, cyberspace security, and user rights?

The fastest rates of growth in internet use are in the global South. This is inherently accompanied by an increasing awareness of internet governance, and ultimately, greater participation in these global policy processes. In the last year, the African School of Internet Governance has started graduating students. More of these efforts will be seen. The corresponding push at the global internet governance level, especially in the framework of organizations like the International Corporation for Assigned Names and Numbers (ICANN), the Internet Society (ISOC), the World Wide Web Consortium (3WC) and the International Engineering Task Force (IETF) and similar efforts at influencing technical policies of internet management will be on the increase. In moving beyond NETmundial, we need to provide more opportunities for the global South to participate.

Stakeholder participation in the governance of the internet is a sacred principle adopted from the very first days of WSIS. However, after ten years, there should be a revisiting of the term. Heated debates at NETmundial (ongoing before this meeting as well), could not resolve the "different roles and responsibilities of stakeholders in internet governance, including the meaning and application of equal footing,"[7] and the topic was set aside to be discussed later. We cannot postpone it forever. The earlier it is tackled, the better for all stakeholders.

The United Nations has been a key stakeholder across the internet governance space, convening WSIS and the IGF. Key action items from WSIS were entrusted to UN agencies. Of special influence is the ITU, which has been at the forefront of telecommunications, even before the internet was the internet we know today. Moving forward, the strong emergence of the multistakeholder model in internet governance processes means that the role of these UN agencies, especially

6 The Web We Want Campaign is a coalition for the promotion and safeguard of online rights and freedoms, launched by the founder of the web, Sir Tim Berners-Lee. See: https://webwewant.org/

7 *NETmundial Multistakeholder Statement*, São Paulo, April, 24th 2014, p. 11, http://netmundial.br/netmundial-multistakeholder-statement/

the ITU, will need to be discussed, as their original configurations are not inherently "multistakeholder."

NETmundial's outcome document received positive support both from participating stakeholders and a large portion of the global internet community. The "letter and spirit" of NETmundial, while in no way replacing the IGF, needs to be kept alive, and the legacy should be transformed from documents to actions, from intentions to policies, and from agreements to achievements. A multistakeholder coalition, initiative, alliance or something similar, is a natural outcome in this vein. A NETmundial Initiative will be launched at a meeting held by the World Economic Forum on 28 August 2014. We need to watch that space.

Conclusion

The NETmundial document is the non-binding outcome of a bottom-up, open, and globally participatory process involving thousands of people from governments, private sector, civil society, the technical community, and academia. It is expected that the outcomes will feed into other processes and forums, such as the post 2015 development agenda process, WSIS+10, IGF, and all internet governance discussions held in different organizations and bodies at all levels.

By 2015, the United Nations General Assembly will have adopted its Sustainable Development Goals as a follow-on to the Millennium Development Goals. In the same year, Brazil will be hosting the 10th IGF. Between now and then, we must keep the NETmundial light burning, not just for the sake of internet governance but for an internet that is a global public good.

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NETmundial: Watershed in Internet Policy Making?

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Was NETmundial a watershed in internet policymaking? History will tell whether the São Paulo conference in April 2014 was the start of a new beginning in the still unchartered territory of learning how to govern the borderless cyberspace. Indeed, NETmundial and the associated follow up discussions contrast sharply with the last ten years of discussions and meetings on internet governance. The NETmundial meeting and processes produced, within less than six months, a set of reasonable results: A Universal Declaration on Internet Governance Principles and an Internet Governance Roadmap. To many observers, NETmundial filled a gap in the global internet governance ecosystem.[1]

No Real Progress in the Last Decade

Since the adoption of the Tunis Agenda in 2005 by the 2nd UN World Summit on the Information Society (WSIS),[2] the internet governance discussion has not really moved forward. Numerous meetings and endless committees produced a never-ending chain of reports, summaries and papers with nice reflections but very little move towards action. The United Nations Commission for Science and Technology Development (UNCSTD), responsible for the WSIS Follow Up, annually discussed internet governance issues and reported to the ECOSOC and the 2nd Committee of the UN General Assembly (UNGA). The UNGA, in reverse, instructed the UNCSTD to look deeper into the two main outcomes of the Tunis Agenda: the Internet Governance Forum (IGF) and the process of enhanced cooperation. However, neither the ping-pong between UNCSTD and UNGA nor the WSIS 10+ process, which started in 2011,[3] produced concrete innovations or sustainable results.

The UNCSTD implemented the UNGA resolutions, inter alia, by the establishment of two working groups: the UNCSTD Working Group on IGF improvement (2010 - 2012)[4] and the UNCSTD Working Group on Enhanced Cooperation/WGEC (2012 - 2014)[5]. The two groups had about ten meetings and drafted several hundred pages of reports and recommendations. This is useful material, but it lacks any practical decisions. The WGEC was even unable to reach a rough consensus about a set of non-binding recommendations.

The lengthy and complex discussions that occurred in the various committees often got lost in the debate over single words from WSIS documents such as “enhanced cooperation,” “respective roles” or “equal footing.” This debate, rather than focusing on concrete issues, was occupied by more abstract questions about these terms and processes: Do governments have more clout than other stakeholders? Are multilateral treaties more important than multistakeholder arrangements? Would a 3rd WSIS summit meeting be better than a WSIS ministerial meeting in 2015? Wordsmiths played language from the 2003 WSIS Geneva Declaration against language of the 2005 WSIS Tunis Agenda to find arguments for the establishment of new intergovernmental internet bodies, a proposition which was later rejected by the followers of the multistakeholder model. Technical issues became politicized, national sovereignty was “rediscovered” and the more

1 NetMundial Multistakeholder Statement, Sao Paulo, April 24, 2014, in: http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

2 Tunis Agenda for the Information Society, November, 18, 2005, in: http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

3 WSIS 10+ is managed by UNGIS (United Nations Group on the Information Society) which has only intergovernmental organizations of the UN system as members. See: http://www.ungis.org/

4 “Working Group on Improvements to the Internet Governance Forum.” UNCTAD.info. Accessed August 28, 2014. http://www.unctad.info/en/CstdWg

5 Working Group to examine the mandate of WSIS regarding enhanced cooperation as contained in the Tunis Agenda (Working Group on Enhanced Cooperation [WGEC]).” UNCTAD.org. Accessed August 28, 2014. http://unctad.org/en/Pages/CSTD/WGEC.aspx

scholastic "Ism-Controversy" (multilateralism vs. multistakeholderism) blocked any progress. The debate turned around and around and did not work towards making constructive contributions towards solving important and emerging internet issues of the 2010s.

The good news was that governments were not the only voices in the multistakeholder UNCSTD Working Groups. However, the non-governmental stakeholders in those groups did not have the power to act without governmental consent. Additionally in UNCSTD, ECOSOC and UNGA only governments have voting power. After ten years of internet governance discussions within those UN bodies, one can conclude that there was and is very little political will among governments to bridge differences, to reach consensus and to move forward.

Regardless of the 56 recommendations of the UNCTSD Working Group on IGF Improvement, even the IGF is today more or less still the same as it was in 2006. The meetings of the Multistakeholder Advisory Group (MAG) are becoming routine work. The IGF Dynamic Coalitions are not as dynamic as anticipated. The secretariat is understaffed. The whole process is underfinanced. And it is always a miracle that regardless of the obvious difficulties and weaknesses of the IGF infrastructure the annual IGF meeting mobilizes generous hosts and engaged participants: a strong argument for the ongoing attractiveness of the basic idea behind the multistakeholder IGF.

The call for more concrete IGF outputs has been repeated year after year with nobody proposing a workable mechanism allowing the IGF to work on practical projects without it becoming a negotiation body. Even less weighty ideas such as the establishment of an Internet Governance Observatory or an Internet Governance Clearinghouse under the umbrella of the IGF remained unfulfilled.

This is no argument against the IGF. On the contrary, the IGF has demonstrated its usefulness. It is greatly beneficial to have a multistakeholder IGF as an *internet policy stimulating body.* However, it needs to be strengthened, and its mandate has to be renewed. Ten years after Tunis, and against the background of a fast changing environment in the internet governance ecosystem, it would also be beneficial to develop (on top of or linked to the IGF) a multistakeholder *internet policymaking mechanism* where stakeholders can find out how to deal with concrete political, economic, cultural, social and legal internet issues.

In other words, in the decade since Tunis, no real innovative breakthrough in internet governance was achieved. In 2004 the former UN Secretary General Kofi Annan told the UN Working Group on Internet Governance (WGIG) that not only technology but also policy needs innovation, saying "In managing, promoting and protecting [the internet's] presence in our lives, we need to be no less creative than those who invented it." He added, "Clearly, there is a need for governance, but that does not necessarily mean that it has to be done in the traditional way, for something that is so very different."[6]

Entering unchartered territory calls for creative and inventive solutions. Two decades ago ICANN emerged as a policy innovation in the internet world. Ten years ago, the policy innovation of the time was the IGF. But where is today´s internet policy innovation? Is it NETmundial?

A Changing Internet Governance Environment

To find this out one must first examine the new realities of the internet governance environment in the middle of the 2010s. Today´s challenges are rather different from the Internet policy problems we had 10 years ago.

a. The number of internet users has tripled since 2005 from 1.2 billion to nearly 4 billion and the majority of those newbies are coming from developing countries;

b. Underserved regions such as South-East Asia, Sub-Saharian Africa, the Arab world or the Pacific Islands have seen a boom in internet connections, mainly linked to enhanced mobile communications;

c. In 2005, the internet governance debate was dominated by the US, the EU and China. Now new rising internet powers such as Brazil, India, Russia, South Africa, Korea, Iran, United Arab Emirates, Saudi Arabia and others have entered the global internet governance policymaking scene;

d. In 2005, policy issues related to social networks or search engines did not play a role in drafting the Tunis Agenda. Now they are of central importance. Additionally, issues related to the use of smartphones, cloud computing and the

6 United Nations. (2004). Internet governance issues are numerous and complex, Secretary-General says at opening of global forum [Press release]. Retrieved from http://www.un.org/News/Press/docs/2004/sgsm9220.doc.htm

Internet of Things need to be addressed.

e. In 2005, we had a re-birth of private start up internet companies which suffered after the blast of the .com-bubble at the end of the 1990s. In 2015, those private sector players have grown into billion dollar businesses, dominating global markets and affecting public policymaking worldwide. The majority of the giants of this "new new economy" are coming from the US (Google, Facebook, Yahoo, Amazon, Apple, Microsoft, AT&T, Verizon, Cisco etc.) and from China (Baidu, Alibaba, Sina, Waibo, Lenovo, China Mobile, Huawei etc.);

f. It is now recognized that the internet is deeply linked to human rights, in particular to the right to freedom of expression and the right to privacy. This has stimulated the adoption of a resolution by the UN Human Rights Council (2012) which states that individuals have the same human rights offline and online. Court decisions, in particular by the European Court of Justice (Luxembourg) and the European Court on Human Rights (Strasbourg), have upheld this principle;

g. It is now recognized that the internet is as place which is of strategic importance for national security. The fight against cybercrime, cyberterrorism and cyberwar becomes a crucial element in national and international policy making. This has triggered discussions around cybersurveillance, cyberspionage and cyberweapons which are partly reflected in negotiations within the 1st and 3rd Committee of the UN General Assembly as well as in bodies like NATO, OSCE, the Council of Europe, BRICS and the Shanghai Group;

h. The internet has become increasingly more important in international trade negotiations as we have seen in the failed ACTA project and as we will see in the ongoing Trans-Atlantic Trade and Investment Partnership (TTIP), Trans-Pacific Partnership (TPP) and the Trade in Service Agreement (TISA) negotiations where issues such as the protection of intellectual property, personal data and cultural diversity in cyberspace will play a role;

i. In 2005, the risk of the fragmentation of the internet was mainly language based. In 2015, efforts to fragment the internet are increasingly politically motivated. More and more countries try to re-nationalize the internet by introducing specific legislation, erecting national firewalls and controlling the distribution of internet content. This was reflected, inter alia, in the (failed) proposal, made by a group of countries (including China, Russia and Saudi Arabia) to introduce the concept of a "national internet segment" into the International Telecommunication Regulations (ITR) during the ITU World Conference on International Telecommunication (WCIT) in Dubai (2012);

j. The management of critical internet resources such as root servers, internet protocols, domain names and IP addresses – which dominated the internet governance discussion in the WSIS process 10 years ago – has been proven to be quite efficient. In the early 2000s there were no internationalized Domain Names (iDNs) and not more than a handful of generic Top Level Domains (gTLDs). The transition from IPv4 to IPv6 was slow. The Root Server System had only 13 members, 10 of them based in the US, and there were security holes in the system. In 2015, iDNs and nearly 1000 new gTLDs are available, the transition to IPv6 has sped up, there are more than 380 Anycast Root Servers around the globe and DNSSec has enhanced substantially security in the internet infrastructure;

k. When the WSIS process started in 2002, ICANN was under oversight of the US government via a Memorandum of Understanding (MoU) and the IANA contract. ICANN's GAC had less than 50 members and no At Large Structures (ALSs) existed. Ten years later, ICANN has demonstrated its maturity by launching programs as iDN, new gTLDs and DNSSEC. In 2009, it became partly independent from the US government by the Affirmation of Commitment (AoC). ICANN opened formal seats in Istanbul and Singapore and about ten offices around the globe. In March 2014, the US government announced its readiness to terminate the IANA contract. The GAC has now 136 members and nearly 200 ALSs are accredited, many participating in the 2nd Internet User Summit in June 2014 in London;

l. New players from all stakeholder groups have entered the internet governance ecosystem as OECD, Council of Europe, OSCE, Shanghai Group, IBSA, BRICS, Global Network Initiative (GNI), World Economic Forum (WEF), International Chamber of Commerce/BASICS (ICC), Access, Human Rights Watch, Reporter without Frontiers and others.

As is apparent, within the last ten years the internet governance ecosystem has changed in a fundamental way. There are new problems, new priorities and new players. The management of critical internet resources is still an issue, but the debate is dominated by internet related public policy issues as international security, sustainable development, job creation, innovation and human rights with related problems as infrastructure, access, cybercrime, cyberwar, content control, mass surveillance, privacy, freedom of expression, intellectual property, e-commerce, network neutrality and others. How to deal with all those issues and challenges? Is the UN system the right place to negotiate solutions? What are the alternatives?

The Internet Governance Ecosystem: A Virtual Rainforest?

One important conclusion from the last ten years is the recognition that internet governance cannot be a hierarchical system with a sole (intergovernmental) decision maker at the top of a pyramid. What we have is an internet governance ecosystem with various governance models for specific issues and where different governmental and non-governmental stakeholders work hand in hand in a decentralized and layered system of shared responsibilities.

From a technical point of view, the whole system has worked in an incredibly flexible way, allowing for growth from 4 million to 4 billion internet users within 20 years, stimulating economic development and broadening individual freedoms. With IPv6 there are enough IP addresses for zillions of individuals, institutions and objects. With the iDN- and gTLD-programs there are enough domain names for everybody in any language. Root servers and Internet Exchange Points are distributed around the globe and DNSSec has made the domain name system much more secure for anybody sending an email or requesting access to a website. Those are strong arguments in favor of Vint Cerf's oft-repeated statement, "if it isn´t broken, don´t fix it."

However this is only half of the truth. On top of this working infrastructure there are new risks, threats and growing opportunities for misuse, which call for enhanced responses. The problem here is that the management "of" the internet and the management "on" the internet are two different shoes but have laces that are heavily interwoven. The management of the technical internet resources, mainly run by "codemakers," has political implications. On the other end, it is impossible to find political solutions, which are discussed by "lawmakers," independent from the underlying technical infrastructure.

How the numerous governmental and non-governmental actors who are involved in various levels of internet policymaking understand the nature of this complexity plays an important role in the evolution of internet governance.

The internet is not a "single issue" which needs to be regulated in one way or another as might be true of the Antarctic or Outer Space. The internet, as it has evolved over half of a century, has penetrated all areas of the political, economic, cultural and social life around the globe. It constitutes today´s environment in which individuals and institutions live and learn, do their business, buy and sell, communicate and have all kind of individual or collective activities. Life without the internet is unthinkable, especially for the younger generation.

The internet governance ecosystem can be compared partly to the rainforest. In the real rainforest an uncountable number of diverse plants and animals live together in a very complex system. In the virtual rainforest we have also an endless and growing diversity of networks, services, applications, regimes and other properties which co-exist, communicate, collaborate, contradict and conflict.

One thing that can be learned from this metaphor is that the rainforest as a whole is not a homogeneous, manageable entity. It can be neither governed nor controlled, but it can be damaged and destroyed. In the internet governance ecosystem many players with very different legal status operate on a multitude of layers, on local, national, regional and international levels, driven by technical innovation, user needs, market opportunities and political interests. This has produced a broad variety of different regulatory, co-regulatory or self-regulatory regimes, which complement or conflict with each other. The system as a whole is decentralized, diversified, layered and has no central authority. However, within the various subsystems there is an incredibly broad variety of different sub-mechanisms ranging from hierarchical structures under single or inter-governmental control to non-hierarchical networks based on self-regulatory mechanisms by a combination of non-governmental groups (private sector, civil society and technical community) and government.

There is neither a "silver bullet" nor a "one size fits all" solution. The specific form of each sub-system has to be designed according to the very particular needs and natures of each individual issue. In such a mechanism,

traditional national legislation and intergovernmental agreements continue to play a role but have to be embedded into the broader multistakeholder environment while new emerging mechanisms have to take note and recognize existing frameworks and regulations on various levels. The "do-not-harm" principle becomes more important than ever. It means that whatever a governmental or non-governmental player decides to do with regard to the internet, actors have to take into consideration these actions' direct or indirect consequences for third parties as well as the unintended side-effects for the system as a whole.

Such a competitive coexistence of rather different regimes and mechanisms creates opportunities but also has risks. There are incredible prospects for new mechanisms, platforms and services to lead to more dynamic political strategies, social actions and market developments. This competitive coexistence can stimulate innovation, promote job creation, enlarge all kinds of cultural activities and broaden the use of individual freedoms by the public at large both in developed and developing nations. But there is also a risk that differences between regimes and systems could create controversies and produce substantial issues, hampering innovation, impeding sustainable development, eroding individual freedoms and polluting the internet governance ecosystem in a way that parts of it will be damaged or destroyed.

The challenge is to find flexible mechanisms for enhanced communication, coordination as well as formal and informal collaboration among the various players at the different layers to allow for all stakeholders to be able to play their respective roles on equal footing without discrimination in an open and transparent mechanism based on mutual respect and democratic checks and balances in a workable and recognized accountability system.

To keep this growing internet governance ecosystem safe, stable and unfragmented it needs efforts by all involved and affected stakeholders, something like a "rainbow coalition" where actors, regardless of their legal status, economic weight or political power are working hand in hand and share principles, programs, responsibilities and decision making capacities.

The Limits of the UN Machinery in Internet Governance

For the existing UN machinery with its fixed procedures it is nearly impossible to react adequately to such a growing complexity and changing environment. This does not mean that intergovernmental organizations and the multilateral treaty system are irrelevant for the internet. They will continue to play a role as an important element in the broader internet governance ecosystem. The traditional procedures and instruments have their merits, but they also have their limits. The internet diplomacy of the 21st century has to go beyond the 20th century mechanisms. What is needed is a political innovation which Kofi Annan called for ten years ago and which reflects this new internet governance complexity.

A demonstration of the limits of the existing mechanism was the Dubai WCIT conference (2012). In its 150 years of history the ITU has adopted all decisions by consensus among its member states. The plan to update the 1988 ITR treaty in 2012 failed to produce a consensus. The 193 member states of the ITU were unable to agree and only 89 governments signed the new ITR contract.

Another example is the Budapest Cybercrime Convention of 2001. Nearly all governments agree that efforts are needed to fight against criminals and terrorists in cyberspace. But only 53 states have signed the Budapest Convention. A substantial number of UN member states are looking for an alternative instrument in the UN General Assembly where a draft convention on cybersecurity, proposed by the government of the Russian Federation, has been pending for more than ten years without any progress.

What are the consequences from this broken intergovernmental consensus? If governments are unable to agree among themselves in multilateral intergovernmental organizations as the UN, WIPO, WTO, ITU or even in ICANN´s Governmental Advisory Committee (GAC), they will consider unilateral actions or bilateral arrangements leading to widening gaps among governments.

This is in particular true for the governments of the two internet superpowers, the United States of America and the People´s Republic of China. The US has ratified the Budapest Convention, while China did not. China did sign the ITRs, and the US did not. The US government has published several unilateral statements on internet policy, from the Principles on the Internet's Domain Name and Addressing System in 2005 to the recent NTIA statement on the IANA transition in 2014. The Chinese government, which has recently established a new ministry on Cyberspace Affairs, has adopted a whole set of national internet rules and procedures. Both governments have published unilateral national

cybersecurity strategies and proposed their own set of principles. For the US a "free internet" has first priority, for China it is the "clean internet."

Is there a possibility to build bridges between the two approaches? A comparison of the proposed principles and policy papers show how deep the gap is between the positions of the two governments. There are some commonalities, but there are many more differences. There is a common interest in keeping the internet stable and safe to ensure cybersecurity and to keep the door open for a flourishing global eCommerce. There is even a common interest in an unfragmented internet. But all this is overshadowed by the conflicts, rooted in different value systems. If both sides speak about "national security in cyberspace" they have a rather different understanding of what this means in reality and how to achieve it. This is a philosophical but very political "free vs. clean" or "individual human rights vs. collective social harmony" conflict, which makes compromises between the two internet superpowers difficult.

The good thing is that both sides talk to each other. There is a bilateral US-Chinese Cyberdialog. And the two presidents, Obama and Xi, have discussed cybersecurity issues at its summit meeting in June 2013 extensively. This can help to avoid a cold cyberwar. But there is a big difference between talking the talk and walking the walk.

NETmundial as a Third Way?

Another consequence of the lack of intergovernmental consensus has been a push for new coalitions among like-minded governments and non-governmental stakeholders. The "rest of the world" is obviously not quite excited to "multilateralize" the internet policies of the two internet superpowers. China's internet policy never received global support, even from many members of the G-77. After the Snowden revelations there was also a growing frustration about the role of the US government in internet policymaking, including from western allies in Europe, Canada, Australia and Japan, governments that share the value of a human rights based internet.

The idea of NETMundial filled a growing niche by offering something like a "third way." It entered an unoccupied space in a landscape where growing frustration about bad behavior of individual governments met the need to stumble forward to keep the existing internet governance ecosystem dynamic, open, free, safe and based on human rights. The idea of NETmundial allowed internet stakeholders, including governments, to escape from making a choice between US surveillance and Chinese censorship. It also allowed these stakeholders to escape from the time and energy consuming debates within the UN system.

NETmundial demonstrated that multistakeholder cooperation on equal footing is doable. NETmundial emerged in a bottom up, open and transparent process. NETmundial was outcome oriented. NETmundial also stimulated concrete actions: from the adoption of a universal set of Internet Governance Principles to the launch of an Internet Governance Roadmap which included the globalization of IANA and ICANN.

To understand the philosophy of NETmundial it is important to remember its history. It was triggered by the revelations of Edward Snowden in summer 2013 and started with two events in Fall 2013: The speech by the president of Brazil, Dilma Rousseff, before the 68th UN General Assembly in New York and the meeting of the so-called I*Organizations in Montevideo in October.

In New York, the Brazilian president, who was the target of NSA surveillance, described this as a "grave violation of human rights and of civil liberties; of invasion and capture of confidential information concerning corporate activities, and especially of disrespect to national sovereignty." She said, "we expressed to the Government of the United States our disapproval, and demanded explanations, apologies and guarantees that such procedures will never be repeated. …Information and telecommunication technologies cannot become the new battlefield between States. Time is ripe to create the conditions required to prevent cyberspace from being used as a weapon of war, through espionage, sabotage, and attacks against systems and infrastructure of other countries." And she proposed the establishment of "a civilian multilateral framework for the governance and use of the internet and to ensure the effective protection of data that travels through the web."[7]

7 Such a framework should be based, the president said, on principles such as: "1. Freedom of speech, privacy of the individual and respect for human rights; 2. Open, multilateral and democratic governance, carried out with transparency by stimulating collective creativity and the participation of society, Governments and the private sector; 3. Universality that ensures the social and human development and the construction of inclusive and non-discriminatory societies; 4. Cultural diversity, without the imposition of beliefs, customs and values; 5. Neutrality of the network, guided only by technical and ethical criteria, thus making unacceptable any restriction due to political, commercial, religious or any other purposes". See: http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf, Statement by H.E. Dilma Rousseff, President of the Federative Republic of Brazil at the Opening Session of the 68th General Assembly of the United Nations, New York, September 24, 2013

Just two weeks later the so-called I*Organizations[8] argued in Montevideo in a similar way as the Brazilian president did in New York: "Harnessing the full potential of the Internet requires, therefore, responsible regulation, which ensures at the same time freedom of expression, security and respect for human rights. …Internet and World Wide Web have brought major benefits in social and economic development worldwide. Both have been built and governed in the public interest through unique mechanisms for global multistakeholder Internet cooperation, which have been intrinsic to their success."[9]

Rousseff's speech and the I* document are pointed in the same direction. They stressed the need for a global regulatory framework which ensures human rights and security and the importance to re-build trust and to keep the internet open, free, stable and unfragmented. However there was also difference in the used language: President Rousseff spoke about "multilateralism" and the United Nations, the I*s about "multistakeholderism" and the internet governance ecosystem.

One week after Montevideo, the Brazilian president met with ICANN's president in Brasilia. Both sides found that there was no contradiction in the two terminologies if they are put into a broader context. In the internet governance ecosystem, multilateral treaties among governments will continue to be important but they are embedded in a multistakeholder environment where governments play a role next to the private sector, civil society and the technical and academic community. There is no single model for the governance of the internet. The community has to learn to find the right answer to the many individual challenges of the internet world case by case, in a bottom up, open, transparent and inclusive policy development process. From this presidential conversation came the idea to convene a "Global Multistakeholder Meeting on the Future of Internet Governance" which soon became known as NETmundial. In other words, NETmundial served to bridge the artificial "Ism-Controversy" by looking forward into the complexity of the internet related public policy issues.

The NETmundial preparatory process had two interrelated components: An institutionalized framework and an open, bottom up and transparent discussion process.

The discussion started during the 8th IGF in Bali in October 2013 with numerous consultations among all stakeholder groups from around the globe. In Bali, the general response was positive. The majority of the IGF participants shared the impression that there is a need to move from reflections to actions and that something has to be done after the revelations of Edward Snowden. There was no enthusiasm to recycle old plans for an "Intergovernmental Internet Council" as proposed by some governments during the Tunis WSIS Summit in 2005. The Bali spirit was not driven by the wish "to sail backwards." The spirit of the day was "to stumble forward" and to explore further the still unchartered territory of the multistakeholder processes. And the idea of NETmundial was seen as an opportunity for the next "stumbling step."

One key discussion point was how "equal" the stakeholders would be who were involved. In a meeting between ICANN's Fadi Chehadé, the Brazilian organization committee and civil society representatives there was strong support for NETmundial, but there was also a very clear message that civil society should be included on equal footing. Civil society made clear that a NETmundial without a strong role for civil society would be a farce and they would reject any top down process or deals behind closed doors among governments and the private sector.

Within a rather short period of time, the various groups involved did form a NETmundial institutional framework which created a mechanism to bring the various stakeholders into a structured process of communication, coordination and collaboration. Four bodies were established:

- A High-Level Multistakeholder Committee, responsible for conducting the political articulation and fostering the involvement of the international community;
- An Executive Multistakeholder Committee, responsible for the meeting agenda, the design of the meeting format and the invitation of attendees, all equally balanced across the global multistakeholder community;

8 The so-called I* Organizations include IETF, ICANN, RIRs, IAB, ISOC and other technical groups of the Internet Governance Ecosystem,

9 In four points they summarized their conclusions: They "1. reinforced the importance of globally coherent Internet operations, and warned against Internet fragmentation at a national level; 2. expressed strong concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance, 3. identified the need for ongoing effort to address Internet Governance challenges, and agreed to catalyze community-wide efforts towards the evolution of global multistakeholder Internet cooperation and 4. called for accelerating the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing." See: *Montevideo Statement on the Future of Internet Cooperation*, October 7, 2013, see: http://www.iab.org/documents/correspondence-reports-documents/2013-2/montevideo-statement-on-the-future-of-internet-cooperation/

- A Logistics and Organizational Committee responsible for guiding all logistical aspects of the meeting including media outreach, international communications, website design and management, awareness raising, meeting venue, traveler funding strategy, security, and remote participation; and
- The Council of Governmental Advisors which involved all government representatives who participated and contributed to the meeting.

The four main stakeholders groups (governments, private sector, civil society, technical community) were involved on equal footing but recognized in their specific roles. The committees were populated by the stakeholder groups themselves in open and transparent processes which gave the groups the needed legitimacy. The committees were instrumental in organizing the input from their constituencies in the process of drafting the final document. NETmundial became like a carriage with four horses moving forward together in the same direction. It looked like a "Roman Quadriga."

The "Internet Governance Quadriga" model worked for the discussion. In contrast to ICANN meeting where discussants queue behind a main microphone, the setting in the NETmundial conference room provided four microphones where speakers from the four stakeholders groups were queueing to make their two minute statement. The chair of the session managed the balanced distribution of speaking time among the four queues.[10]

This "Internet Governance Quadriga" model also worked quite well for the decision making procedures. It stimulated 186 proposals from around the world. It allowed for an agreement on a conference agenda for a two day meeting and a draft document with 15 pages, structured into two main parts with a section for Internet Governance Principles and a section for an Internet Governance Roadmap. The draft of the final document was published before the conference and triggered another 1000 comments, allowing the High Level Multistakeholder Committee, in an open and transparent drafting meeting, to reach rough consensus. The document was finally adopted by acclamation by all stakeholders. Only four governments expressed reservations.

However, this does not mean that the whole process was perfect. Some parties did not find their original position adequately reflected in the final document. There were last minute lobbying efforts by some powerful private corporations and governments. There were efforts to settle some problems via the traditional diplomatic "horse-trading behind closed doors". Civil society was not happy with the language related to net neutrality and surveillance. The Russian government was not happy with the text related to cybersecurity. The private sector was not happy with the paragraphs on privacy. The fact that all consultations and the drafting of the full text took place in an open and transparent environment with the equal participation of representatives from all stakeholder groups created a rather balanced final outcome which made everybody equal unhappy. The São Paulo Multistakeholder Internet Governance Declaration represents the rough consensus of the time by keeping the process open for further improvements in the coming years.

Internet Governance Principles

A key part of the final NETmundial document was the section on internet governance principles. The discussion on such principles goes back into the 1990s when the former EU Commissioner Martin Bangemann proposed a "Global Communication Charter." Internet governance principles were discussed again in the context of the WSIS although the Tunis Agenda did not introduce any specific internet regulation. The Internet Governance Forum (IGF) became the place for a continuation of the debate, mainly via the IGF Dynamic Coalition on Internet Rights and Principles. In the early 2010s, intergovernmental organizations such as the G8, the Council of Europe, the OECD, and the Shanghai Group, and non-governmental organizations such as the Global Network Initiative (GNI) from the private sector, the Association for Progressive Communication (APC), a global civil society organization and the technical oriented I*-organizations adopted declarations on internet governance principles.

10 See the speech of the German Foreign Minister, Frank Walter Steinmeier at the opening of EURDIG, Berlin, June 12, 2014. "For the German Foreign Office, my colleague Dirk Brengelmann went to Sao Paolo. And when he came back, Ambassador Brengelmann told me a story about how this conference worked. He said: When we were putting together the different parts of the final document, everybody got an equal say. A truly equal say: Because all participants –software engineers, entrepreneurs, NGO people and government people – all of them had to line up at the microphone to deliver their statements. And each had the same time to talk – exactly two minutes. Now I ask you: Can you imagine a NATO Defence Summit, where a minister waits in line to speak after a human rights activist? Or a G20 Meeting, where a President queues at the microphone? Or, in fact, can you imagine any politician who speaks for only two minutes? Can you imagine that? I can't. And if I could, I am sure my protocol office would give me a very hard time… The internet is different. It is, and it should be, a free, safe and open space. That is why we use this rather technical term: the multi-stakeholder model." http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Reden/2014/140612-BM_EuroDIG.html?nn=555306

Until 2013, more than 25 different documents with principles on how to govern the internet were flying around. This resulted in confusion and "principle shopping" where actors just picked the principles they liked to justify their behavior in cyberspace. The weakness of all those principles and documents was that they were supported either by only one stakeholder group or were limited in scope by geography and substance. None of the 25+ documents were universal and multistakeholder.

At the 8th IGF in Bali (2013) the main sponsors of the various declarations – OECD, Council of Europe, the governments of Russia, China and India, cgi.br, APC, I* and GNI – were sitting at one table. However, no agreement could be reached on how to "globalize" and "multistakeholderize" the process of the making of principles for internet governance.

What the IGF could not achieve, was accomplished by NETmundial: a rough consensus across all stakeholder groups. The São Paulo Declaration summarizes - in eight principles with 17 subparagraphs - the essence of the previous 25+ documents. It "globalized" and "multistakeholderized" them.

The Preamble of the São Paulo Document states that the principles are legally not binding. It is worth remembering in this context that the Universal Declaration of Human Rights from 1948 is a legally non-binding document. It became an important reference source because it got such a broad support from all corners of the political spectrum in the post-WWII years. The São Paulo Document reflects a similar consensus in the Internet Age. Never before in the history of internet governance has there been a document which had such broad political support both from governments and non-governmental stakeholders. Regardless of its legal nature, this document constitutes a basis with criteria allowing for measurement and evaluation of internet policies, of good or bad behavior in cyberspace. There is no mechanism to bring a wrongdoer to an international internet court, but the NETmundial document allows "naming and shaming" if a government, a corporation or users conflicts with its principles.

If a government restricts access to Twitter or Facebook, it can be "named and shamed" by violating Principle 1.1 (freedom of expression). If governments negotiate treaties to regulate internet issues behind closed doors they can be "named and shamed" because they violate the principle 7.3, transparency. If a corporation ignores data protection laws it can be "named and shamed" because it violates the right to privacy (principle 1.3). If somebody wants to change the open internet architecture, it can be "named and shamed" to violate principle 4 (unified and unfragmented space) and principle 6 (open and distributed architecture) which states that the internet should "upholds the end-to-end nature of the open Internet."[11]

Conclusion

Did NETmundial create a new multistakeholder model? Yes and no. No, because there is and will not be one single multistakeholder internet governance model. But the answer can also be yes, because NETmundial introduced some new elements which went beyond the previous experiences in bringing life to the multistakeholder approach.

The Tunis Agenda defined internet governance and recommended that all stakeholders should share principles, programs and decision making in the further evolution and the use of the internet. Since then we have seen different forms of the mutistakeholder approach:

- In the WSIS Follow up (WSIS 10+, UNCSTD etc.) all governmental and non-governmental stakeholders are involved but at the end of the day the governments decide. This is a multistakeholder process under governmental leadership.

- In ICANN we see also the involvement of all stakeholders. However, governments participate in ICANN processes only in an advisory capacity. At the end of the day it is the ICANN Board—where governments are represented by one non-voting liaison—which decides. This is a multistakeholder process under private sector leadership.

- In the IGF all stakeholders are involved on equal footing, but the IGF has no decision-making capacity.

The NETmundial added an important component. It was mainly a discussion process – like the IGF – but produced tangible results. It involved all stakeholders—as WSIS and ICANN—but treated them in the decision making process as equals. This is an innovation.

11 Over the years the legally non-binding Human Rights Declaration became a highly respected political instrument. If a government tortured prisoners, censored media or restricted freedom to travel, human rights groups around the globe referred to the relevant articles of the declaration. It is also interesting to remember that there was no full consensus, when the 3rd UN General Assembly adopted the Human Rights Declaration in December 1948. 48 UN member states voted with yes, but eight governments expressed their reservations and abstained, among them the Soviet Union, Ukraine, Yugoslavia, the apartheid South Africa and Saudi Arabia.

The decision making process within NETmundial was different from the intergovernmental decision-making within the UN machinery, but it was also different from ICANN processes. There were "language negotiations" as in a UN body, but the language was not negotiated among governments only but produced by a multi-stakeholder committee in an open environment. On the other hand, there was a bottom up and open policy development process (PDP) as in ICANN. However, the decisions were made by a committee in which governments were members on equal footing (and not only advisers). Decisions in NETmundial were made not by voting, as in a UN body or in the ICANN Board, but by rough consensus. Running code and rough consensus is the way RFCs are emerging in the IETF. The NETmundial combined in a certain way two different decision making cultures that have thus far shaped the rule making of the internet.

Such an approach obviously has the potential to organize a broad commitment which goes beyond intergovernmental agreements and embraces also large internet corporations, technical institutions and civil society organizations from governmental as well as non-governmental stakeholders around legally non-binding guidelines for internet related public policy issues. This is novel and could become the starting point for a new journey into unchartered territory.

At this stage it would be unrealistic to expect that such an approach could produce legally binding agreements. But the NETmundial approach could help to discover what has to be done if there are issues that need more than general principles. Such an approach could also help to clarify which existing body or which mechanism would be best suited to produce legally binding agreements, if needed.

To a certain degree such a process would be similar to a clearinghouse function. One could imagine a situation where the IGF identifies and discusses issues, flagging problems for further action. The NETmundial process could take this as an invitation and investigate —via its multistakeholder committees or a new NETmundial Initiative—what the best way would be to find a practical solution.

NETmundial and IGF could complement each other. The weakness of one process could be compensated by the strength of the other one. Both IGF and NETmundial are based on the same principles. The (intergovernmental) Tunis Agenda has paved the way for the (multistakeholder) São Paulo Declaration. If NETmundial and IGF would combine their strengths, they could create more opportunities to achieve concrete results in managing the growing number of internet related public policy problems.

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